Supreme Court U.S.
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(41) (36)

Nos. 01-1118, 01-1119

IN THE

# Supreme Court of the United States

JOSEPH SCHEIDLER, *ET AL.*, *Petitioners.*

v.

NATIONAL ORGANIZATION FOR WOMEN, INC. *ET AL.*, *Respondents.*

---

OPERATION RESCUE, *Petitioner.*

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*, *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

## JOINT APPENDIX

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**PETITIONS FOR CERTIORARI FILED JANUARY 28, 2002**
**CERTIORARI GRANTED APRIL 22, 2002**

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[1]Juror Ostrander's first name, on page 315a. should be "Patrick," not "Patricia."

## RELEVANT DOCKET ENTRIES

## I. U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION -- NO. 86 CV 7888

| Date | No. | Proceedings |
|---|---|---|
| 10/17/86 | 01 | COMPLAINT |
| * * * | | |
| 02/02/89 | 155 | AMENDED COMPLAINT |
| * * * | | |
| 09/22/89 | 236 | SECOND AMENDED CLASS ACTION COMPLAINT |
| * * * | | |
| 3/18/91 | 469 | Plaintiffs' RICO case statement |
| * * * | | |
| 05/28/91 | 500 | MEMORANDUM, OPINION, AND ORDER |
| 05/28/91 | 501 | ENTERED JUDGMENT |
| 05/28/91 | 502 | MINUTE ORDER of 5/28/91 before Honorable James F. Holderman: Enter memorandum opinion and order that defendants' motion to dismiss Count 1 and Counts 2-4 is granted. Due to lack |

| Date | No. | Proceedings |
|---|---|---|
| | | of pendent jurisdiction Counts 5-7 are dismissed. This cause of action is dismissed in its entirety. |
| | * * * | |
| 08/12/92 | 591 | OPINION from the USCA for the 7th Circuit argued 02/19/92; decided 06/29/92. |
| | * * * | |
| 10/03/94 | 676 | CERTIFIED COPY of order from the USCA for the 7th Circuit entered 05/16/94: This cause came before the court on remand from the United States Supreme Court. It is ordered and adjudged that this cause is remanded to the District Court for further proceedings, in accordance with the decision of this court entered on this date. (USCA #91-2468) |
| 10/03/94 | 677 | CERTIFIED copy of Order from the USCA for the 7th Circuit Court regarding appeal (USCA #91-2468) |
| | * * * | |
| 10/21/94 | 692 | MOTION for leave to file third amended complaint |

| Date | No. | Proceedings |
|---|---|---|
| * * * | | |
| 10/21/94 | 694 | MINUTE ORDER of 10/21/94 by Hon. James F. Holderman : Status hearing held; continued to 12/22/94 at 10:00 a.m. Plaintiffs' motion for leave to file third amended complaint is granted. |
| * * * | | |
| 10/31/94 | 701 | AMENDED RICO case statement by Summit Women's Health, Delaware Women's Health, National Organization for Women (Attachment) |
| * * * | | |
| 12/01/94 | 715 | THIRD AMENDED CLASS ACTION COMPLAINT |
| * * * | | |
| 12/13/94 | 728 | MOTION by defendant Timothy Murphy, defendant Operation Rescue, defendant Joseph M Scheidler, defendant Pro-Life Action League for clarification, and/or reconsideration of court's orders of 10/21/94 |
| * * * | | |
| 02/07/95 | 758 | MEMORANDUM, OPINION, AND ORDER |

| Date | No. | Proceedings |
|---|---|---|
| 02/07/95 | 759 | MINUTE ORDER of 2/7/95 by Hon. David H. Coar: For the reasons stated in the memorandum opinion entered this date. It is hereby ordered that defendants' motion for clarification and reconsideration of the order of 10/21/94 and defendant Wojnar's motion for reconsideration and clarification of the 10/21/94 order are denied. |
| * * * | | |
| 02/22/95 | 776 | MOTION by defendants Randall A. Terry, Project Life, Operation Rescue to dismiss the third amended complaint |
| * * * | | |
| 03/02/95 | 787 | MOTION by defendant Joseph M Scheidler to dismiss the third amended class action complaint |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 03/14/95 | 792 | RESPONSE by plaintiffs' Nat'l Organ. for Women, Delaware Women's Health, Summit Women's Health to motion to dismiss plaintiffs' amended complaint [784-1], motion to dismiss the third amended class action complaint [787-1], motion to dismiss the third amended complaint [776-1], motion to dismiss plaintiffs' third amended class action complaint [774-1], motion to dismiss count V of plaintiffs' third amended complaint for lack of jurisdiction [768-1], motion in the alternative to dismiss count V of plaintiffs' third amended complaint with prejudice for failure to state a claim upon which relief can be granted [768-2] |
| * * * | | |
| 07/25/95 | 835 | MEMORANDUM, OPINION, AND ORDER |
| 07/25/95 | 836 | MINUTE ORDER of 7/25/95 by Hon. David H. Coar: Granting motion to dismiss count V of plaintiffs' third amended complaint for lack of jurisdiction [768-1] or in |

| Date | No. | Proceedings |
|---|---|---|
| | | the alternative to dismiss count V of plaintiffs' third amended complaint with prejudice for failure to state a claim upon which relief can be granted [768-2]. Denying motion to dismiss plaintiffs' third amended class action complaint [774-1]. Denying motion to dismiss the third amended complaint [776-1]. Granting motion to dismiss plaintiffs' third amended complaint [784-1]. Motion to dismiss the third amended class action complaint [787-1] is denied. (See reverse of minute order) |
| | | * * * |
| 02/02/96 | 875 | MOTION by plaintiffs Nat'l Organ. for Women, Delaware Women's Health, Summit Women's Health for class certification |
| 02/02/96 | 876 | MEMORANDUM by Nat'l Organ. for Women, Delaware Women's Health, Summit Women's Health in support of plaintiffs' motion for class certification |
| | | * * * |

| Date | No. | Proceedings |
|---|---|---|
| 03/05/96 | 879 | ANSWER to third amended complaint by defendants Randall A. Terry, Operation Rescue, Project Life |
| | * * * | |
| 03/13/96 | 885 | ANSWER by defendants' Joseph M. Scheidler, Andrew Scholberg, Timothy Murphy, Pro-Life Action League to plaintiffs' third amended class action complaint |
| | * * * | |
| 01/21/97 | 977 | MOTION by Randall A. Terry, Pro-Life Action League, Operation Rescue for summary judgment (Exhibits) |
| | * * * | |
| 03/28/97 | 1004 | MEMORANDUM, OPINION, AND ORDER |
| 03/28/97 | 1005 | MINUTE ORDER of 3/28/97 by Hon. David H. Coar: For the reasons set forth in the attached Memorandum Opinion and Order, plaintiffs' motion for class certification is granted. |
| | * * * | |

| Date | No. | Proceedings |
|---|---|---|
| 09/19/97 | 1030 | MEMORANDUM, OPINION, AND ORDER |
| 09/19/97 | 1031 | MINUTE ORDER of 9/19/97 by Hon. David H. Coar : For the reasons set forth in the attached Memorandum Opinion and Order, defendants' motion for summary judgment [977-1] is granted as to defendant Project Life on plaintiffs' 1962(c) and (d) RICO claims, and as to all defendants on plaintiffs' 1962(c) RICO claim to the extent that it is based on the predicate acts of murder, arson, or kidnapping. Defendants TPO's motion as to defendants Terry and OR on the remaining portions of plaintiffs' RICO claims is denied. As to defendant Migliorino's motion for summary judgment [968-1] that motion is granted as to plaintiffs' 1962(c) and (d) RICO claims and state law claims. |

* * *

| Date | No. | Proceedings |
|---|---|---|
| 12/24/97 | 1039 | OBJECTIONS by defendants Joseph M. Scheidler, Andrew Scholberg, Timothy Murphy and Pro-Life Action League to plaintiffs' proposed voir dire & jury questionnaire and defendants' proposed jury questions |
| 12/29/97 | 1040 | RESPONSE by plaintiffs to the Scheidler defendants' opposition to jury questionnaire |
| 01/05/98 | 1046 | JOINT MOTION by parties for preliminary approval of partial settlement |
| 01/07/98 | 1047 | MINUTE ORDER of 1/7/98 by Hon. David H. Coar : Preliminary pretrial conference held in chambers. This court preliminarily approves the settlement between the plaintiff and defendant Randall A. Terry [1046-1]. Notice of settlement to issue by plaintiffs' counsel. Objections to the settlement to be submitted by 2/9/98. Hearing on any objections set for 2/18/98 at 9:45 a.m. |

| Date | No. | Proceedings |
|---|---|---|
| | | Scheidler defendants are given to Tuesday, 1/13/98 by 12 Noon to file documents pertaining to the pretrial order. |
| | * * * | |
| 01/08/98 | 1044 | TRIAL brief by plaintiffs |
| | * * * | |
| 01/20/98 | 1063 | OPPOSITION by plaintiffs to defendant Operation Rescue's motions in limine to exclude testimony regarding shootings of abortion clinic physicians or personnel [1056-1] |
| | * * * | |
| 01/20/98 | 1067 | MEMORANDUM IN RESPONSE by plaintiffs to defendant Operation Rescue's motion in limine to exclude admissions from alleged co-conspirators under F.R.E. 801(d)(2)(e) [1058-1] |
| 01/20/98 | 1068 | MEMORANDUM by plaintiffs in opposition to defendant Operation Rescue's motion in limine to exclude evidence regarding non-economic injury [1054-1] |
| | * * * | |

| Date | No. | Proceedings |
|---|---|---|
| 02/05/98 | 1076 | TRANSCRIPT of proceedings for the following date(s): 1/7/98 Before Honorable David H. Coar |
| * * * | | |
| 02/18/98 | 1095 | ORDER of final approval of partial settlement between plaintiffs and Randall A. Terry. |
| 02/18/98 | 1096 | MINUTE ORDER of 2/18/98 by Hon. David H. Coar: Fairness hearing held and concluded, there being no timely filed objections, settlement between plaintiffs and Randall A. Terry is approved. Scheidler defendants' objections are overruled, request for further hearing is denied. Enter order of final approval of partial settlement between plaintiffs and Randall A. Terry. |
| * * * | | |
| 02/24/98 | 1091 | MEMORANDUM by plaintiffs in support of plaintiffs' proffer under Rule 104 |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 02/25/98 | 1093 | PROPOSED JURY INSTRUCTIONS submitted by plaintiffs |
| 02/25/98 | 1094 | EXHIBITS by plaintiffs to plaintiffs' proffer of evidence under Rule 104. |
| | * * * | |
| 02/27/98 | 1101 | PRE-TRIAL ORDER (Attachments). |
| 02/27/98 | 1102 | MINUTE ORDER or 2/27/98 by Hon. David H. Coar: Enter final pretrial order. Pretrial conference held. |
| | * * * | |
| 03/02/98 | 1105 | BRIEF by plaintiffs Nat'l Organ. for Women, Delaware Women's Health, Summit Women's Health in support of admissibility of newsletters written by PLAN leadership council members/co-defendants. |
| | * * * | |
| 3/03/98 | 1113 | MINUTE ORDER of 3/3/98 by Hon. David H. Coar: Trial began - jury. |

| Date | No. | Proceedings |
|---|---|---|
| * * * | | |
| 03/04/98 | -- | SCHEDULE set on 3/4/98 by Hon. David H. Coar: Jury trial held and continue to 10:00 3/5/98. |
| * * * | | |
| 03/05/98 | -- | SCHEDULE set on 3/5/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 3/9/98. |
| 03/06/98 | -- | SCHEDULE set on 3/6/98 by Hon. David H. Coar: Rule 104 Hearing hearing held. The court preliminarily ruled on certain exhibits. |
| * * * | | |
| 03/09/98 | -- | SCHEDULE set on 3/9/98 by Hon. David H. Coar: Due to the weather conditions, the full jury did not appear. The Court did not conduct trial proceedings, the Jury trial was continued to 10:00 3/10/98. The lawyers being present, the Court did conduct a further hearing regarding the exhibits and made oral rulings. |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 03/10/98 | -- | SCHEDULE set on 3/10/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 3/11/98. |
| | * * * | |
| 03/11/98 | -- | SCHEDULE set on 3/11/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 3/12/98. |
| [03/12/98 | -- | Jury trial held and continued to 3/16/98] |
| | * * * | |
| 03/16/98 | 1128 | Jury trial held; continued to 3/17/98 at 10:00 a.m. |
| | * * * | |
| 03/17/98 | 1129 | Jury trial held; continued to 3/23/98 at 10:00 a.m. |
| | * * * | |
| 03/23/98 | 1139 | Jury trial held; continued to 3/24/98 at 10:00 a.m. |
| | * * * | |
| 03/24/98 | 1141 | Jury trial held; continued to 3/25/98 at 9:30 a.m. |
| | * * * | |

| Date | No. | Proceedings |
|---|---|---|
| 03/25/98 | -- | SCHEDULE set on 3/25/98 by Hon. David H. Coar: Jury trial held and continued to 3/26/98 at 10:00. [Rule 50 motions denied.] |
| 03/26/98 | -- | SCHEDULE set on 3/26/98 by Hon. David H. Coar: Jury trial held and continued to 8:15 & 10:00 a.m. on 3/30/98 |
| * * * | | |
| 03/30/98 | 1148 | LIST OF EXHIBITS by plaintiffs admitted during their case in chief |
| * * * | | |
| 03/30/98 | -- | SCHEDULE set on 3/30/98 by Hon. David H. Coar: Jury trial held and continued to 8:00 3/31/98. |
| 03/31/98 | -- | SCHEDULE set on 3/31/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/1/98. |
| 04/01/98 | -- | SCHEDULE set on 4/1/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/2/98. |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 04/02/98 | -- | SCHEDULE set on 4/2/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/6/98. |
| 04/06/98 | -- | SCHEDULE set on 4/6/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/7/98. |
| 04/07/98 | -- | SCHEDULE set on 4/7/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/8/98. |
| 04/08/98 | -- | SCHEDULE set on 4/8/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/9/98. |
| * * * | | |
| 04/09/98 | -- | SCHEDULE set on 4/9/98 by Hon. David H. Coar: Jury trial held and continued to 10:00 4/13/98. |
| * * * | | |
| 04/13/98 | 1165 | MINUTE ORDER of 4/13/98 by Hon. David H. Coar: Defendant Operation Rescue's motion to adopt certain jury instructions is granted as to proposed jury instruction murder, arson and bombing, all |

| Date | No. | Proceedings |
|---|---|---|
| | | others are denied [1164-1]. Jury trial held; continued to 4/14/98 at 10:00 a.m. |
| | * * * | |
| 04/14/98 | 1169 | Jury trial held; continued to 4/15/98 at 10:00 a.m. |
| | * * * | |
| 04/15/98 | 1173 | JURY INSTRUCTIONS |
| 04/15/98 | 1174 | EXHIBIT list by plaintiffs |
| | * * * | |
| 04/15/98 | 1176 | MINUTE ORDER of 4/15/98 by Hon. David H. Coar: Jury instructions given and closing arguments. Jury deliberation begin. |
| | * * * | |
| 04/20/98 | 1178 | SPECIAL INTERROGATORIES AND VERDICT FORM for plaintiffs against defendants |

| Date | No. | Proceedings |
|---|---|---|
| 04/20/98 | 1179 | MINUTE ORDER of 4/20/98 by Hon. David H. Coar: Status hearing set for 9:45 am on 4/21/98. Jury trial ends. Jury verdict in favor of the plaintiffs and against the defendants. |
| * * * | | |
| 06/15/98 | 1194 | TRANSCRIPT of proceedings for the following date(s): 04/21/98, Before Honorable David H. Coar |
| * * * | | |
| 06/29/98 | -- | SCHEDULE set on 6/29/98 by Hon. David H. Coar: Pretrial conference held. |
| 06/30/98 | -- | SCHEDULE set on 6/30/98 by Hon. David H. Coar: held and continued hearing set for 10:00 7/1/98. |
| * * * | | |
| 07/02/98 | 1232 | MINUTE ORDER of 7/2/98 by Hon. David H. Coar : Preliminary injunction hearing held and concluded. |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 07/29/98 | 1220 | MINUTE ORDER of 7/29/98 by Hon. David H. Coar: For the reasons stated on the record - motion in limine to exclude testimony regarding shootings is granted to the extent that plaintiffs are barred from introducing evidence that the defendants authorized, directed, or were otherwise involved in shootings of abortion clinic physicians and personnel [1056-1]. Denied to the extent that plaintiffs are not barred from presenting evidence of shootings related in time and place to speech and actions by or on behalf of defendants alleged to be threatening. This motion is terminated. |
| * * * | | |
| 07/29/98 | 1226 | MINUTE ORDER of 7/29/98 by Hon. David H. Coar: For the reasons stated on the record - motion in limine to exclude admissions from alleged co-conspirators is granted in part and denied in part [1058-1]. This motion is terminated. |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 07/31/98 | 1229 | MEMORANDUM of law by plaintiffs in support of injunctive relief |
| | * * * | |
| 08/31/98 | 1240 | TRANSCRIPT of proceedings for the following date(s): 2/20/98, 3/3/98, 3/4/98, 3/5/98, 3/6/98, 3/9/98, 3/10/98, 3/11/98, 3/23/98, 3/24/98, 3/25/98, 3/26/98, 3/30/98, 3/31/98, 4/1/98, 4/7/98, 4/8/98, 4/9/98, 4/13/98, 4/14/98 (2 vols.), 4/15/98, 4/16/98, 4/20/98, 6/29/98, 6/30/98, 7/1/98, 7/2/98, 7/16/98, 7/24/98, 8/24/98 Before Honorable David H. Coar (31 vols: 1240-1 through 1240-31) |
| | * * * | |
| 08/31/98 | 1242 | TRANSCRIPT of proceedings for the following date(s): 2/27/98, 3/2/98, 3/3/98, 3/12/98, 3/16/98, 3/17/98, 4/1/98, 4/2/98, 4/6/98 Before Honorable David H. Coar (9 vols: 1242-1 through 1242-9) |
| | * * * | |
| 09/11/98 | 1248 | MOTION by defendant Operation Rescue for remittitur or, in the alternative for a new trial |

| Date | No. | Proceedings |
|---|---|---|
| * * * | | |
| 09/17/98 | 1253 | MINUTE ORDER of 9/17/98 by Hon. David H. Coar: Defendant Operation Rescue's motion for remittitur [1248-1], or alternatively, for a new trial [1248-2] is denied. |
| * * * | | |
| 09/17/98 | 1256 | MINUTE ORDER of 9/17/98 by Hon. David H. Coar: Scheidler defendants' oral motion for leave to join defendant Operation Rescue's motion for remittitur or alternatively, a new trial is granted. The motion for remittitur or for a new trial is denied. |
| * * * | | |
| 10/02/98 | 1260 | REPLY by plaintiffs in support of injunctive relief and treble damages |
| * * * | | |
| 07/16/99 | 1296 | INJUNCTION ORDER |
| 07/16/99 | 1297 | MINUTE ORDER of 7/16/99 by Hon. David H. Coar: Enter: Permanent injunction order. |

| Date | No. | Proceedings |
|---|---|---|
| 07/16/99 | 1298 | MEMORANDUM, OPINION, AND ORDER |
| 07/16/99 | 1299 | MINUTE ORDER of 7/16/99 by Hon. David H. Coar: For the reasons set forth in the attached memorandum opinion and order, defendants Joseph Scheidler and Operation Rescue's motion to decertify class action is denied [1267-1]. Plaintiffs National Organization for Women, Delaware Women's Health Clinic, and Summit Women's Health Clinic's to amend the complaint to conform to evidence is denied. Plaintiffs' motion for phase II damage trials is denied. The court grants plaintiffs' petition for a permanent injunction to be placed upon defendants for a period of twelve (12) years. All other pending motions are denied as moot. This case is now closed [1227-1] [1264-1] [1237-1]. |

* * *

| Date | No. | Proceedings |
|---|---|---|
| 08/03/99 | 1304 | MOTION by defendant Operation Rescue for judgment as a matter of law, or alternatively for a new trial (Attachments) |
| | * * * | |
| 08/05/99 | 1309 | MINUTE ORDER of 8/5/99 by Hon. David H. Coar: As set forth on the reverse side of this order, defendant Operation Rescue's motion for judgment as a matter of law or, alternatively for a new trial is denied |
| 08/06/99 | 1310 | NOTICE OF APPEAL by defendants Joseph M. Scheidler, Andrew Scholberg, Timothy Murphy, [Pro-Life Action League, Inc.] |
| | * * * | |
| 08/16/99 | 1312 | NOTICE OF AMENDED NOTICE OF APPEAL by defendant Joseph M. Scheidler et al. |
| | * * * | |

| Date | No. | Proceedings |
|---|---|---|
| 08/20/99 | 1321 | MINUTE ORDER of 8/20/99 by Hon. David H. Coar: Motion for leave to file corrected objections to plaintiffs' proposed judgment is granted. Status hearing held regarding the plaintiffs' proposed judgment. Objections overruled in part and granted in part. The plaintiff shall prepare a judgment order and circulate to the parties by close of business on 8/20/99. If no objections are filed to the revised judgment, the court will enter the judgment on Tuesday, 8/24/99 by 12:00 p.m. |
| * * * | | |
| 08/20/99 | 1324 | JUDGMENT in a civil case |
| * * * | | |
| 08/25/99 | 1325 | MINUTE ORDER of 8/25/99 by Hon. David H. Coar: Defendants' objection to the newly revised proposed judgment are denied. Enter Judgment Order. |

| Date | No. | Proceedings |
|---|---|---|
| 08/25/99 | 1326 | MINUTE ORDER of 8/25/99 by Hon. David H. Coar: Judgment is hereby entered in favor of the plaintiffs and against the defendants. Plaintiff Summit Women's Health Organization, Inc. have and recover from the defendants Scheidler, Scholberg, Murphy Pro Life Action, Inc. and Operation Rescue jointly and severally, the sum of $163,413.84, the jury verdict of $54,471.28 trebled under RICO with interest. Plaintiff Delaware Women's Health Organization, Inc. have and recover from same defendants jointly and severally the sum of $94,366.92, the jury verdict of $31,455.64. trebled under RICO with interest. A permanent injunction is entered. The Court shall retain jurisdiction to enforce the terms of the injunction for twelve (12) years. (Entered Judgment in a civil case). This case is closed. |
| * * * | | |
| 08/26/99 | 1328 | NOTICE OF APPEAL by defendant Operation Rescue |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 09/13/99 | 1337 | RULE 52(b) motion by defendants Andrew Scholberg, Pro-Life Action League, Joseph M Scheidler, Timothy Murphy to alter or amend findings, and for additional findings |
| 09/13/99 | 1338 | MOTION by defendant Joseph M Scheidler under rule 60(b) |
| * * * | | |
| 09/15/99 | 1351 | MOTION by plaintiffs for leave to file exhibits and deposition transcripts to be included in the record on appeal |
| * * * | | |
| 09/28/99 | 1354 | LIST of exhibits to be included in record on appeal by plaintiff |
| 09/28/99 | 1363 | MINUTE ORDER of 9/28/99 by Hon. David H. Coar: Defendants' motion under Rule 60(b) is denied. |
| 09/28/99 | 1364 | MINUTE ORDER of 9/28/99 by Hon. David H. Coar: Defendants' post judgment motions under Rule 50(b) is denied. Defendants' motion under Rule 59 for new trial or |

| Date | No. | Proceedings |
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| | | judgment is denied. [Doc #1337-1] Defendants' motion under Rule 52(b) to alter or amend is denied. |
| 09/29/99 | 1355 | COPY of Order from the 7th Circuit. The court on its own motion, orders that these appeals are consolidated for purposes of briefing and disposition. (99-3076 and 99-3336) |
| | * * * | |
| 11/04/99 | 1373 | NOTICE OF APPEAL by defendants Andrew Scholberg, Pro-Life Action League, Joseph M. Scheidler, Timothy Murphy from motion minute order [1372-1] [1363 & 1364] |
| | * * * | |
| 11/08/99 | 1375 | NOTICE OF APPEAL by defendant Operation Rescue from final judgment of 08/27/99 and all other orders |
| | * * * | |

| Date | No. | Proceedings |
|---|---|---|
| 08/28/00 | 1406 | MOTION by defendant Operation Rescue for relief from judgment |
| 08/28/00 | 1408 | SUPPLEMENTAL MOTION by Andrew Scholberg Rule 60(b) motion |
| * * * | | |
| 03/28/01 | 1444 | MINUTE ORDER of 3/28/01 by Hon. David H. Coar: For the reasons stated in the attached memorandum opinion and order, defendants' motion for relief from judgment [1406-1] and supplemental Rule 60(b) motion [1408-1] are denied. Entered Memorandum Opinion and Order. |
| * * * | | |
| 04/26/01 | 1446 | NOTICE OF APPEAL by Scheidler defendants Andrew Scholberg, Pro-Life Action League, Joseph M Scheidler, Timothy Murphy and Operation Rescue from order Memorandum Opinion and Order [1444-1], motion minute order [1444-2] |
| * * * | | |

| Date | No. | Proceedings |
|---|---|---|
| 05/21/01 | 1450 | COPY of Order dated 05/18/01 from the 7th Circuit: It is ordered that the motion is granted, and these appeals are consolidated for purposes of disposition. Briefing in 01-2050 is suspended at this time. The court will determine at a later date whether briefing will be necessary in 01-2050. (99-3076, 99-3336, 99-3891, 99-3892, and 01-2050) |
| * * * | | |
| 10/31/01 | 1468 | ORDER dated 10/29/01 from the 7th Circuit: On consideration of the petitions for rehearing and rehearing en banc filed by counsel for Defendants-Appellants Scheidler, Scholberg, Murphy & Pro-Life Action League, Inc. and counsel for defendant-appellant Operation Rescue, all members of the original panel have voted to deny the petitions for rehearing. No judge in regular, active service requested a vote on rehearing en banc. Accordingly, it is ordered that the petitions for rehearing be, and the same are hereby, denied. |

| Date | No. | Proceedings |
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| 11/06/01 | 1471 | OPINION from the 7th Circuit: Argued 09/14/00; Decided 10/02/01. (99-3076, 99-3336, 99-3891, 99-3892 and 01-2050) |
| 11/06/01 | 1472 | CERTIFIED COPY of order from the 7th Circuit: Affirming the decision of the District Court |
| 11/06/01 | 1473 | ORDER dated 10/29/01 from the 7th Circuit: It is ordered that the petitions for rehearing be, and the same are hereby, denied. |
| 11/14/01 | 1474 | MINUTE ORDER of 11/14/01 by Hon. David H. Coar: Status hearing held. Defendants' Rule 60(b) motions are all withdrawn. Document numbers [1460-1]; [1461-1] and [1461-2] and [1465-1] are all terminated. |

## II. U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT, NOS. 99-3076, 99-3336, 99-3891, 99-3892 & 01-2050

| Date | Proceedings |
|---|---|
| 09/28/99 | ORDER consolidating appeals (99-3076 & 99-3336) |
| 11/18/99 | ORDER consolidating appeals (99-3076, 99-3336, 99-3891 & 99-3892) |
| 09/14/00 | ORAL ARGUMENT |
| 05/18/01 | ORDER consolidating appeal 01-2050 with pending appeals |
| 10/02/01 | OPINION |
| 10/12/01 | ORDER amending opinion |
| 10/29/01 | ORDER DENYING PETITIONS FOR REHEARING AND REHEARING EN BANC |

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of its women members and other women who use or may use the services of women's health centers that provide abortions; DELAWARE WOMEN'S HEALTH ORGANIZATION, INC.; and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC. on behalf of themselves and all other similarly-situated clinics, Plaintiffs, v. JOSEPH M. SCHEIDLER; RANDALL A. TERRY; ANDREW SCHOLBERG; CONRAD WOJNAR; TIMOTHY MURPHY; MONICA MIGLIORINO; VITAL-MED LABORATORIES, INC; PRO-LIFE ACTION LEAGUE, INC.; PROJECT LIFE; and OPERATION RESCUE, Defendants. | Civil Action No. 86 C 7888<br>THIRD AMENDED CLASS ACTION COMPLAINT |

## NATURE OF THE ACTION

1. This is a civil action brought pursuant to the Racketeer

Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962 and state law. Plaintiffs seek declaratory and injunctive relief and damages from Defendants who have conspired, among themselves and with others through their enterprise, Pro-Life Action Network (PLAN), to engage in a pattern of racketeering activity that is designed to inflict, and that, in fact, has inflicted, injury on the business and property of women who seek the services of clinics that offer abortion and the clinics that offer those services.

2. Through PLAN, Defendants and their co-conspirators have engaged in Predicate Acts of racketeering, including: (A) acts and threats of extortion against clinic personnel, patients, suppliers of goods and services to the clinics, and others; acts and/or threats of murder against clinic personnel, including doctors, and their families; acts and/or threats of kidnaping of clinic personnel, including doctors, and their families; and acts and/or threats of arson against clinics, all chargeable under state law and punishable by imprisonment for more than one year; and (B) the unlawful taking of interstate shipments of fetal remains with intent to convert the fetal remains to their own uses, in violation of 18 U.S.C. § 659; the obstruction of interstate commerce by extortion and/or attempts and/or conspiracy to commit extortion and/or the commission and/or threat of physical violence to persons and property in violation of 18 U.S.C. § 1951; and travel in interstate commerce and the use of facilities in interstate commerce with intent to commit crimes of violence to further acts of extortion and/or arson, and/or to promote, manage, establish, carry on or facilitate the promotion, management, establishment, or carrying on of extortion or arson, in violation of laws of the state in which such activity was committed and/or of the United States, all in violation of 18 U.S.C. § 1952.

3. The Defendants' Predicate Acts have interfered directly with the clinics' business and property, including but not limited to business relations with patients, personnel, lessors, medical laboratories, and other providers of goods and services.

4. The Defendants' Predicate Acts have also interfered directly with patients' business and property rights, including but not limited to their contractual relations and prospective business relations with the clinics, and their right to engage in such business relations free of threat of force or violence.

5. The National Organization for Women ("NOW") sues as a representative on behalf of its women members who use or may use the services of clinics that perform abortions and other women who use or may use the services of such clinics. The Delaware Women's Health Organization ("DWHO") and the Summit Women's Health Organization, Inc. ("Summit") sue on behalf of themselves and all other similarly-situated clinics that perform abortions and that have been victim of Defendants' pattern of racketeering activity.

## JURISDICTION

6. This Court has jurisdiction over the RICO claims pursuant to 28 U.S.C. § 1331. Jurisdiction is also conferred by 18 U.S.C. § 1964. This Court has supplemental jurisdiction over the state law claims pursuant to 18 U.S.C. § 1367. Plaintiffs' prayers for declaratory relief are authorized by 28 U.S.C. § 2201.

## PLAINTIFFS

7. NOW is a nationwide, non-profit organization with over 250,000 members dedicated to advancing and protecting

the legal rights of women. Since its founding in 1966, NOW has had a special, ongoing concern for the rights of women to reproductive freedom. Currently, NOW is engaged in a wide variety of efforts at the local, state and national levels to ensure that women continue to have access to safe, economical abortion and family planning services. As part of NOW's Campaign for Women's Lives, NOW members serve as escorts to patients at women's health centers, such as the named Plaintiff clinics, DWHO and Summit, as well as at other clinics, including the Ladies Center, Inc., in Pensacola, Florida, to help protect them from harassment and intimidation by Defendants and others. NOW is incorporated, and has its principal place of business in Washington, D.C.

8. DWHO is a Florida corporation with its principal place of business in Wilmington, Delaware. DWHO operates a women's health center that provides abortions, counseling to help patients explore alternatives to abortion and a variety of gynecological services such as pelvic examinations, Pap tests, breast cancer screening, birth control counseling, pregnancy testing, and patient education. DWHO, which opened in 1977, was the first out-patient clinic of this type in Delaware. Until 1983 it was the only such clinic in Delaware.

9. Summit is a partnership with its principal place of business in Milwaukee, Wisconsin. Summit operates a women's health center that is affiliated with DWHO and that also provides abortions, counseling to help patients explore alternatives to abortion and a variety of gynecological services such as pelvic examinations, Pap tests, breast cancer screening, birth control counseling, pregnancy testing, and patient education.

10. Clinics such as DWHO and Summit provide safe, low-cost abortion services. Approximately three out of four

abortions in the United States are performed at clinics such as DWHO and Summit. A first trimester abortion performed at such clinics costs approximately two to five times less than the same procedure at a hospital.

## DEFENDANTS

11. Joseph M. Scheidler is a resident of Chicago, Illinois. and has been the director of Defendant Pro-Life Action League, Inc., at all times relevant to the lawsuit. Beginning no later than 1987, he served on the leadership council of PLAN.

12. Randall A. Terry is a resident of Windsor, New York. He has been the executive director of Project Life and was the national organizer of Operation Rescue. He has engaged in an illegal conspiracy with Defendants and others in the Northern District of Illinois, and he has engaged in the planning and commission of racketeering activity in the Northern District of Illinois. Beginning no later than 1987, he served on the leadership council of PLAN.

13. Andrew Scholberg is a resident of the Northern District of Illinois and was the assistant director of Defendant Pro-Life Action League, Inc., from February 1988 until approximately 1990. He has been a featured speaker at two or more PLAN conventions. On information and belief, he is currently employed by Defendant Conrad Wojnar and/or the Des Plaines Pro-Life Women's Center.

14. Conrad Wojnar is a resident of the Northern District of Illinois. Wojnar runs a number of anti-abortion women's medical clinics in the Chicago area and is the director of the Des Plaines Pro-Life Women's Center.

15. Timothy Murphy is a resident of the Northern District of Illinois. Murphy has been a paid employee of Defendant Pro-

Life Action League, Inc., since September 1988, and he worked as a volunteer for Pro-Life Action League, Inc., before that date. He has been a featured speaker at one or more PLAN conventions.

16. Monica Migliorino is the director of Citizens for Life in Milwaukee, Wisconsin, and she has been a featured speaker at one or more PLAN conventions. She has engaged in racketeering activity in the Northern District of Illinois, and has engaged in activities in this district, described in greater detail below, in furtherance of PLAN's conspiracy.

17. Vital-Med Laboratories, Inc., ("Vital-Med") is an Illinois corporation with its principal place of business in the Northern District of Illinois. Since 1984, Vital-Med or its predecessor has provided pathology testing and other services to DWHO, Summit and their affiliated clinics.

18. Pro-Life Action League, Inc., ("PLAL") is an Illinois corporation with its principal place of business in Chicago, Illinois. Its business consists of using racketeering activity to disrupt and close clinics that perform abortions.

19. Operation Rescue ("OR") is an unincorporated organization comprised of individuals and organizations, including PLAL, Scheidler, Terry, Scholberg, Murphy, and others. Its principal offices were originally located in Binghamton, New York. Its business consists of using racketeering activity to disrupt and close clinics that perform abortions. Through Terry and other agents and co-conspirators, OR has engaged in racketeering activity with its co-Defendants and others in the Northern District of Illinois.

20. Project Life, Inc., (the "Project") is an organization with its principal place of business in Binghamton, New York. Through PLAN, Randall Terry and other agents and co-conspirators, the Project has engaged in racketeering activity

with its co-Defendants and others in the Northern District of Illinois.

## CLASS ALLEGATIONS

21. Plaintiffs DWHO and Summit bring this action pursuant to Rule 23(a), (b) (2) and (b) (3) of the Federal Rules of Civil Procedure on behalf of themselves and all other similarly-situated clinics that perform abortions in the United States. The class is so numerous that joinder of all of its members is impracticable; there are numerous questions of law or fact common to the class and they predominate over individual issues; the claims of the named Plaintiffs are typical of the claims of the class; the named Plaintiffs will fairly and adequately protect the interests of the class; and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief and damages with respect to the class as a whole.

22. Plaintiff NOW brings this action on behalf of its women members and all other women who use or may use the services of clinics that perform abortions. The prerequisites of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure are satisfied. NOW's women members and other women who use or may use the services of clinics that perform abortions have standing in their own right; the interests NOW seeks to protect are germane to the organization's purpose; and neither the claim asserted nor the relief requested requires the participation of individual NOW members or other women in the lawsuit. Furthermore, the ability of the class members to represent themselves is limited. The class of NOW's women

members and other women who use or may use the services of clinics that perform abortions is so numerous that joinder of all of its members is impracticable; there are numerous questions of law or fact common to the class; NOW will fairly and adequately protect the interests of the class; and the Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

## INTERSTATE COMMERCE

23. Clinics such as DWHO and Summit are engaged in interstate commerce.

24. A substantial portion of DWHO's patients come from states other than Delaware, and a substantial portion of Summit's patients come from states other than Wisconsin.

25. A substantial portion of medical supplies and equipment purchased by DWHO and Summit comes from out-of-state sources.

26. Since at least 1984, Defendants (except Wojnar and Vital-Med) have operated an enterprise through which they have agreed and conspired among themselves and with others to drive every clinic in the United States, such as DWHO and Summit, out of business through a pattern of racketeering activity.

27. Wojnar has conspired with these Defendants to violate RICO by driving clinics across the country out of business through a pattern of racketeering activity.

28. In pursuit of their goal to drive every clinic out of business, Defendants (except Vital-Med) have traveled throughout the country, and/or used interstate telephone lines and U.S. Mail services for the purpose of engaging in, and/or

encouraging others to participate in, their enterprise, which is devoted to the commission of racketeering activity at clinics such as DWHO and Summit.

29. Scheidler has distributed throughout the United States a manual, Closed: 99 Ways to Stop Abortion, outlining methods intended to be used to interfere with clinics such as DWHO and Summit. Scheidler's manual encourages the use of predicate acts of racketeering activity to drive clinics such as DWHO and Summit out of business.

30. Scheidler has traveled throughout the country training other persons to use racketeering activity, including but not limited to the methods outlined in Closed: 99 Ways to Stop Abortion.

31. Scheidler, Terry, Scholberg, Murphy, and Migliorino have traveled throughout the country leading efforts to shut down women's health centers such as DWHO and Summit through the use of racketeering activity.

32. Scheidler, Scholberg and Murphy use or have used Defendant PLAL to carry out their nationwide racketeering activity.

33. Terry has traveled throughout the country encouraging, organizing and training other persons to use racketeering activity, including blockades designed to stop ingress and egress to the clinics, to close clinics that provide abortion and thus force Plaintiffs to give up property rights.

34. Terry uses Defendants OR and the Project to carry out his nationwide racketeering activity.

35. Murphy and Migliorino, with the assistance of Defendants Wojnar, Scheidler and others, have stolen laboratory remains from interstate commerce and used interstate telephone communications and the mails to intimidate and harass clinics in at least six states. Migliorino has also

traveled across state lines to accomplish the theft and to convert the fetal remains to her own uses and the use of her co-conspirators.

## FORMATION OF THE ENTERPRISE: PRO-LIFE ACTION NETWORK

36. From May 10 to 12, 1984, the first National Pro-Life Conference, entitled "Action for Life," was held in Ft. Lauderdale, Florida. Scheidler presented a conference workshop on "Effective Confrontation: A 'How To' of Picketing, Leafletting, Sit-ins and Blitzes." He also spoke at a "Ready for Action" rally. As part their training, approximately 200 conference participants were taken by bus from the convention to the Women's Awareness Clinic, a Fort Lauderdale clinic that offers abortion services. They surrounded the clinic, blocking all entrances and exits.

37. The following month, in June 1984, Scheidler, PLAL and others met in Kansas City, Missouri, to formulate a six-month plan of national activities. The plan included so-called "blitzes" of abortion clinics in which anti-abortion "activists" were to enter the clinics to disrupt their business and to create a threatening and intimidating atmosphere at the clinics. The plan was designed to close down as many clinics across the country as possible.

38. In June 1984, co-conspirator Michael Bray participated in the arson of a women's health center in Annapolis, Maryland.

39. Throughout 1984, co-conspirators Kay Wiggins, James Simmons, Kathren Simmons, and others committed and attempted to commit numerous acts of arson against the Ladies Center in Pensacola, Florida.

40. By 1985, more than forty clinics that offered abortion

services had been the victims of arson.

41. In April 1985, Action for Life II, the Second Annual Pro-Life Activist Conference was held in Appleton, Wisconsin. At this conference, participants named their coalition of "activist" anti-abortion groups the "Pro-Life Action Network" ("PLAN"). PLAN adopted an agenda of nationally-coordinated racketeering activities, including so-called "sit-ins," to shut down the abortion industry, and pledged to create "a year of pain and fear" for anyone receiving or performing an abortion. Conference participants were greeted by a marque at the conference site that said, "Have a Blast." Many wore firecrackers, to symbolize dynamite, as lapel pins. Scheidler and PLAL participated in this national meeting.

42. On March 25,1986, Scheidler, PLAL and others led a workshop in Pensacola, Florida, designed to encourage local residents to join them in using racketeering activity to drive clinics that perform abortion out of business.

43. On March 26, 1986, these same Defendants and others went to the Ladies Center of Pensacola, Inc., a clinic in Pensacola, Florida, that performs abortions, to lead efforts to shut it down. During the course of their efforts, four of the co-conspirators, including Joan Andrews and John Burt, stormed the clinic. John Burt injured Linda Taggert, the clinic administrator, and Georgia Wilde, then-president of the Escambia County chapter of NOW. Andrews ransacked a medical procedures room, destroying surgical supplies. Both Andrews and Burt had to be subdued by the police. Both had their bail revoked after they returned to the clinic following their arrests. Both were convicted on criminal charges as a result of their actions.

44. In that same month, co-conspirator Michael Bray attempted arson at a women's health center in Baton Rouge,

Louisiana.

45. In April 1986, Scheidler traveled to Delaware to organize and train persons to use his methods for shutting down clinics such as DWHO and to galvanize them into action.

46. On April 11, 1986, in furtherance of the nationwide effort to close down clinics that perform abortions, Defendant Scheidler unlawfully entered DWHO. Scheidler told the clinic administrator, Cathy Conner, that he had come to "case the place" because he and his followers intended to force DWHO to close. He stated that he and others intended to make Delaware the first abortion-free state in the nation. He threatened Conner with reprisals should she refuse to quit her job. Conner left her job with DWHO in the spring of 1987.

47. On April 12, 1986, Scheidler threatened that anti-abortionists "will get rid of [clinics such as DWHO]. I proclaim that Delaware is going to become the first state in the union to be free of abortion facilities."

48. Scheidler was arrested and charged with criminal trespass and harassment on April 12, 1986, as a result of his actions at DWHO the previous day. He was subsequently convicted and fined.

49. Later in April 1986, Scheidler and PLAL participated as organizers and workshop presenters at PLAN's third annual conference in St. Louis, Missouri. Conference participants adopted goals for the year that included changing their language to refer to clinic invasions as "rescue missions" instead of the term they had previously used, "sit-ins." The 1986-1987 PLAN Agenda called for "Days of Rescue" in June, August and December 1986, and January and April 1987. Field training for conference participants in "rescue missions" took place on Saturday, April 19, 1986, when 107 were arrested for blocking access to the Regency Park Center, a clinic in St. Louis that

performs abortions.

50. On November 28 and 29, 1986, Scheidler returned to Pensacola to demonstrate at the Ladies Center and at the home of Judge William Anderson, who had sentenced Joan Andrews for her role in the invasion of the Ladies Center in March 1986. Terry also traveled to Pensacola for the activities.

51. On Friday, November 28, 1986, several hundred anti-abortion activists conducted blockades at the Ladies Center for some four hours. Police had to order the blockaders to let cars through their picket line and onto the Ladies Center property. Seven people were arrested for refusing to move from in front of a truck. After the arrests, the remaining demonstrators moved into the street and stopped traffic. The Escambia County Sheriff's Department had to be called in to help the Pensacola Police Department maintain order.

52. On Saturday, November 29, 1986, Scheidler and others addressed a rally followed by a march to the home of Judge Anderson, where approximately one hundred protesters gathered. Scheidler went onto the porch of Judge Anderson's home and knocked on the door, but no one answered. Some demonstrators then refused to leave the porch and others left their protest signs behind. When officers began making arrests, Scheidler hurriedly left as the demonstration erupted into a confrontation with police. One officer was knocked to the ground, another was grabbed from behind by demonstrators attempting to help people who had been arrested escape from the police. An officer's radio was taken from him by a demonstrator, and demonstrators surrounded a police cruiser in which one of those arrested had been placed by officers. Once again the city police requested assistance in crowd control from the Escambia County Sheriff's Department when demonstrators refused to move away from the surrounded cruiser. Eight

people were arrested.

53. On December 14, 1986, PLAN held a mini-conference in St. Louis, Missouri, attended by Scholberg, among others. Scheidler sent a tape and received a copy of Scholberg's notes from the meeting, including the goals and guidelines adopted. The mini-conference was held in large part to discuss their concerns over public perception of the incidents on November 28 and 29, 1986, in Pensacola. Scholberg and Ryan reported to the group that Scheidler might want to distance himself from PLAN for a while.

54. The participants at the December 1986 conference agreed unanimously that one of their goals was to close down clinics that perform abortion. They set out guidelines to ensure better control of PLAN demonstrations in order to improve public perception of the "activist" anti-abortion movement, improve media relations and promote an impression of unity in their movement. Co-conspirator John Ryan was named interim leader of PLAN, and it was agreed that some kind of leadership council, including Ryan and Scheidler, should be on the agenda at the next PLAN Convention, scheduled for April 29 to May 2, 1987. The PLAN leaders agreed to meet again on January 21, 1987, in Washington, D.C.

55. From April 30 to May 2, 1987, all of the Defendants except Wojnar, Migliorino and Vital-Med took part in the annual PLAN convention in Atlanta, Georgia, including the "field training" session on Saturday, May 2, 1987. Scheidler, Terry and Scholberg were featured as speakers at the convention. Seventy-nine people were arrested during the "field training" at the Women's Health Center. A news release from Defendants before the conference stated that they would try to stop abortions at Atlanta clinics "by any and all means available. No abortion clinic will be spared." At a news

conference during the convention. Scheidler said tactics such as blocking entrances of clinics and abrasive confrontations with women seeking abortions were necessary "to take their business away from [the providers]."

56. At the 1987 PLAN convention, a leadership council of five regional representatives was elected, including Scheidler and Terry, along with John Ryan from St. Louis, Missouri, Andrew Burnett from Portland, Oregon, and Peter Lennox from Atlanta, Georgia. Ryan had been arrested numerous times for disrupting clinics by force; Burnett had been arrested at the 1986 PLAN convention field training; and Lennox had attended the PLAN mini-conference in December 1986. Both Burnett and Lennox were featured speakers at the 1987 PLAN convention. The council met during the convention and again on August 21, 1987, in Washington, D.C.

57. In December 1987, after numerous threats by Scheidler that he would close a Chicago women's health center, and after incitation by Scheidler to give that clinic "a hard time" and to "molest" it, co-conspirator Anthony Lesniewski physically assaulted a security guard at the American Women's Health Center by attempting to run him over with a vehicle.

58. From August 25 through 27, 1988, Defendant PLAL sponsored the 1988 PLAN convention in Chicago. Scheidler, Scholberg, Murphy, Migliorino, Terry, PLAL, OR, and the Project took part. Scholberg, Murphy and Migliorino were speakers. Terry also spoke to the convention on the activities of OR and was featured at a PLAN news conference on Friday, August 26, encouraging others to take part in "field training" planned for the next day. On Saturday, August 27, conference participants, including Scheidler, Murphy and others, took part in blockades at two clinics in Chicago. At one of the clinics, demonstrators used a tactic that Scheidler called a "lock and

block." Scheidler described it as a new method requiring fewer people to close a clinic. Demonstrators poured glue into the locks of the clinic's doors and locked a Kryptonite bicycle lock on the door handles. Murphy and another demonstrator also used bicycle locks, positioned around Murphy's neck and the other demonstrator's ankle, to attach themselves to a solid block of concrete, which they had placed in front of the clinic door. Sixteen people, including Murphy, were arrested in connection with the blockade of the clinic.

## CARRYING OUT PLAN'S AGENDA: OPERATION RESCUE

59. Beginning no later than 1986, the PLAN Defendants and others conspired to organize massive blockades (which they called "sit-ins") and clinic invasions at abortion clinics nationwide. Their goal was physically to block access to the clinics in order to prevent patients and staff from entering or leaving and to create a threatening, intimidating atmosphere and a public image of danger in connection with the clinics. Terry presented the proposal to the other Defendants in November 1986, in Pensacola, Florida.

60. Over a period of months, the plan to blockade clinics, organized under the name "Operation Rescue," was discussed and revised. Following a visit between Scheidler and Terry in New York in March 1987, the plan was finalized and brochures were printed showing Scheidler, Scholberg and PLAL among the co-sponsors of OR.

61. The revised plan for OR was presented at the 1987 PLAN convention. The 1987-88 "direct action" schedule that came out of the convention included OR actions from April 30 through May 7, 1988, directed at clinics in the New York City

area. Field training was scheduled for Thanksgiving 1987, in St. Louis, but at the PLAN leadership council meeting August 21, 1987, in Washington, D.C., Defendants and the other organizers decided to change the location to the northeastern United States.

62. On November 28, 1987, PLAN organizers and others affiliated with them took part in an OR field training in Cherry Hill, New Jersey. Some 300 people from over a dozen states blocked access to the Cherry Hill Women's Center. Two hundred eleven people were arrested.

63. From May 2 through May 6, 1988, in violation of both state and federal restraining orders, OR conducted four days of clinic blockades in New York City and Hicksville, Long Island. Arrests totalled 503 on Monday, May 2; 423 on Tuesday, May 3; 401 on Thursday, May 5; and 320 on Friday, May 6. Scheidler served as an official marshal during the New York City siege. Scheidler and Scholberg were among those arrested. Scheidler was reported to have said he was there to see how the New York action was done, since they expected to do an OR action in Chicago as well.

64. On July 19, 1988, a series of OR actions began in Atlanta, Georgia. More than 1,200 participants were arrested during the nearly four months that the sieges continued. Felony charges were brought against Terry for inciting police assault and clinic trespass. At least thirty OR participants in Atlanta were arrested on felony charges: eight for assaulting a police officer; six for terrorist acts; and sixteen for false imprisonment.

65. In early October 1988, PLAN ended the OR actions in Atlanta as it geared up for a National Day of Rescue on October 29, 1988. For the National Day of Rescue, Terry, Scheidler, Scholberg, Murphy, PLAL, and other PLAN participants organized simultaneous OR actions in approximately forty

cities around this country and in Toronto, Canada, blockading clinics and prompting nearly 2,500 arrests.

66. In addition to the nationally-coordinated OR actions discussed above, local OR actions have taken place almost continuously since the November 1987, activity in Cherry Hill, New Jersey. More than 10,000 participants have been arrested in OR actions since that time.

* * *

**COUNT I: RICO § 1962(c)**

82. This Count is brought against all Defendants except Vital-Med and Wojnar. Scheidler, Terry, Scholberg, Murphy, Migliorino, PLAL, OR, and the Project are referred to as the "1962(c) Defendants."

83. PLAN is an enterprise under 18 U.S.C. § 1961(4), engaged in and affecting interstate commerce. PLAN is an association of individuals and groups with the common purpose of using racketeering activity to drive all clinics that provide abortion services out of business. PLAN is wholly distinct from the pattern of racketeering activity engaged in by each Defendant.

84. Scheidler, Terry, Scholberg, Murphy, and Migliorino, each persons under 18 U.S.C. § 1961(3), are associated with PLAN by virtue of their involvement in its annual conventions as speakers and in other capacities. Defendants Scheidler and Terry are also associated with PLAN by virtue of their positions on its leadership council.

85. PLAL, OR and the Project, each a person under 18 U.S.C. § 1961(3), are associated with PLAN and are among its member groups. In addition, they are associated with PLAN

through the roles played by their current or former directors, Scheidler and Terry, in PLAN.

86. Each of the 1962(c) Defendants conducted and participated in the conduct of PLAN's affairs through a pattern of racketeering activity. The predicate acts comprising the pattern of racketeering activity include but are not limited to those acts described in paragraph 87 below. The 1962(c) Defendants conspired to, attempted to or did wrongfully use their pattern of racketeering activity to injure the business and property of the Plaintiffs.

87. The 1962(c) Defendants have committed the following Predicate Acts, among others:

A. Attempts, conspiracies to commit and commission of extortion against the Women's Awareness Clinic, its employees, doctors, patients, and prospective patients in Ft. Lauderdale, Florida, by persons attending the 1984 National Pro-Life Conference, at which Scheidler presented a workshop, in violation of Fla. Stat. Ann. § 836.05, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

B. Conspiracy and threats to commit extortion by Scheidler and others associated with him as part of their participation in the 1985 PLAN Conference against anyone receiving or performing an abortion, in violation of state extortion laws, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

C. Conspiracy to commit extortion by persons attending a March 25, 1986, workshop led by Scheidler and others associated with Defendants in Pensacola, Florida, which organized co-conspirators to attempt or use extortion and/or physical violence to drive the Ladies Center and similar clinics out of business, in violation of Fla. Stat. Ann. § 836.05, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

D. Extortion, attempted extortion and the commission

of physical violence against clinic personnel and others on March 26, 1986, when John Burt physically injured the president of the local NOW chapter, the clinic administrator and others in the course of efforts by Scheidler, PLAL and others associated with them to shut down the Ladies Center and other clinics through extortion and/or physical violence, in violation of Fla. Stat. Ann. § 836.05, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

E. The destruction of medical supplies by co-conspirator Joan Andrews on March 26, 1986, in the course of efforts by Scheidler, PLAL and others associated with them to shut down the Ladies Center and other clinics and in furtherance of a plan to commit extortion by using threatened or actual force or violence to induce the Ladies Center's and other clinics' employees, doctors, patients, and prospective patients to relinquish their property rights, in violation of Fla. Stat. Ann. § 836.05, 18 U.S.C. § 1951 and 18 U.S.C. 1952;

F. Attempts, conspiracies to commit and commission of extortion against the Regency Park Center, its employees, doctors, patients, and prospective patients in St. Louis, Missouri, by persons attending the 1986 PLAN Conference, in which the 1962(c) Defendants participated as organizers and workshop presenters, in violation of Mo. Code. Ann. § 570.030, 18 U.S.C. 1951 and 18 U.S.C. § 1952;

G. Attempted and actual extortion by Defendant Scheidler on April 11, 1986, when Scheidler threatened DWHO's clinic administrator with reprisals if she refused to quit her job at the clinic, in violation of D.C. Code Ann. §§ 22-3851 and 22-2307, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

H. Attempts, conspiracies to commit and commission

of extortion against the Women's Health Center, its employees, doctors, patients, other clinics and prospective patients in Atlanta, Georgia, by the 1962(c) Defendants and others attending the 1987 PLAN Conference, in violation of Ga. Code Ann. § 16-8-16, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

I. Attempts, conspiracies to commit and commission of extortion and/or physical violence at a series of OR actions, including:

(1) A "field training" action on November 28, 1987, and continuous actions since then directed at the Cherry Hill Women's Center in Cherry Hill, New Jersey, in which Terry, OR, the Project, and others associated with them blocked access to the clinic, among other unlawful actions, in violation of N.J. Stat. Ann. §§ 2C:20-2 and 2C:20-5, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

(2) Four days of blocking the entry to clinics in New York City and Hicksville, Long Island, from May 2 to May 6, 1988. Terry was an organizer and Scheidler served as official marshal for the New York action. Terry, Scheidler and other PLAL employees were among those arrested at the New York actions. These acts violated New York Penal Law § 155.05(e), 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

(3) Nearly four months of forcible and/or violent actions, beginning July 19, 1988, directed against clinics in Atlanta, Georgia. More than 1,200 participants in these actions, including Terry and others associated with him, were arrested for charges including inciting police assault, assaulting a police officer, terrorist acts, false imprisonment, and trespass. These acts violated Ga. Code Ann. § 16-8-16, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

(4) A forty-city "National Day of Rescue" on October 29, 1988, organized by Terry, Scheidler, PLAL, OR, the Project, and others associated with them to block access to clinics and force or attempt to force clinics to close, in violation of state extortion laws, 18 U.S.C. § 1951 and 18 U.S.C. § 1952;

* * *

88. Each of the Predicate Acts obstructed, delayed and/or affected interstate commerce insofar as it succeeded, and many of the Predicate Acts involved travel in interstate commerce by the Defendants and/or their co-conspirators with the intent to commit crimes of violence to further acts of extortion and/or to promote extortion, in violation of state and/or federal laws.

89. Each violation of 18 U.S.C. § 1962(c) directly and proximately injured the business and/or property interests of the Plaintiffs and the class members.

90. Specifically, Defendants' racketeering activities have decreased the business of and/or increased the cost of doing business at DWHO, Summit and similarly-situated clinics. The Defendants' activities have injured the Plaintiff class of NOW's women members and other women who have been unable to obtain abortion services, or whose choice of clinics that provide these services has been restricted, by depriving them of the right to engage in business relationships with the clinics, to reap the economic and medical advantages of having that choice and to enter into such relationships free of threat of force or violence.

91. Defendants' Predicate Acts are calculated to and, insofar as they have been successful, do: induce clinic personnel to give up their jobs and doctors their economic right

to practice medicine.

WHEREFORE, Plaintiffs ask that this Court certify this case as a Plaintiffs' class action; grant injunctive relief to the class of women and the class of clinics, enjoining Defendants and their co-conspirators from further racketeering activity; award Plaintiffs DWHO and Summit and the class of clinics treble damages, to be proved at trial, along with costs and attorneys' fees; and grant all other relief to which Plaintiffs may be entitled.

## COUNT II: RICO § 1962(d)

92. This Count is brought against all Defendants except Vital-Med. Plaintiffs reallege paragraphs 1 through 91 above.

93. Each of the Defendants (except Vital-Med) agreed with each other and other persons to conduct and/or participate in the conduct of the affairs of PLAN through a pattern of racketeering activity. Each of these Defendants further agreed to the commission of two or more predicate acts through which each would conduct and/or participate in the conduct of PLAN's affairs, in violation of 18 U.S.C. § 1962(d).

94. As a direct and proximate result of Defendants' conspiracy in violation of 18 U.S.C. § 1962(d), Plaintiffs have been injured in their business and/or property, as alleged in paragraphs 89-91 above.

WHEREFORE, Plaintiffs ask that the Court certify this case as a Plaintiffs' class action; grant injunctive relief to the class of women and the class of clinics, enjoining Defendants and their co-conspirators from further racketeering activity and conspiracy to commit racketeering activity; award Plaintiffs DWHO and Summit and the class of clinics treble damages, to be proved at trial, along with other costs and attorneys' fees;

and grant all other relief to which Plaintiffs may be entitled.

* * *

/s/ Fay Clayton

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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| NATIONAL ORGANIZATION FOR WOMEN, INC., et al., | ) |
| | ) No. 86 C 7888 |
| Plaintiffs, | ) |
| | ) Judge Coar |
| v. | ) |
| | ) Magistrate Judge Lefkow |
| JOSEPH M. SCHEIDLER, et al., | ) |
| | ) |
| Defendants. | ) |

PRETRIAL ORDER

This matter having come before the Court at a pretrial conference held pursuant to Rule 16, Fed. R. Civ. P., and Plaintiffs being represented by Fay Clayton, Judi A. Lamble and Sara N. Love of Robinson Curley & Clayton, P.C., 300 South Wacker Drive, Suite 1700, Chicago, Illinois 60606, (312) 663-3100, and Alan M. Pollack of Pollack & Greene, 757 Third Avenue, New York, New York 10017, (212) 421-5300, and Lowell E. Sachnoff and Jack L. Block of Sachnoff & Weaver, Ltd., 30 South Wacker Drive, Suite 2900, Chicago, Illinois 60606, (312) 207-1000; and Defendants Joseph M. Scheidler, Timothy Murphy, Andrew Scholberg and the Pro-Life Action League being represented by Thomas Brejcha, 185 North Wabash Avenue, Suite 1207, Chicago, Illinois 60601, (312) 782-1680, and Defendants Randall A. Terry and Operation Rescue being represented by Larry L. Crain, 101

Westpark Drive, Suite 205, Brentwood, Tennessee 37027, (615) 376-2600, the following actions were taken:

1. This is a civil action brought by the National Organization for Women, Inc. ("NOW") on behalf of its members and women who are not members of NOW and whose rights to the services of women's health centers in the United States at which abortions have been performed have or will be interfered with by Defendants' unlawful activities, and two named women's health clinics, the Delaware Women's Health Organization ("DWHO") and Summit Women's Health Clinic ("Summit"), on behalf of themselves and all similarly-situated clinics that perform abortions in the United States. Plaintiffs allege violations of the Racketeer-Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), and conspiracy to violate RICO, 18 U.S.C. § 1962(d). In addition, DWHO and Summit individually assert a state law claim for tortious interference with prospective economic advantage.

The class of women represented by NOW has been certified pursuant to Rule 23(b)(2), Fed. R. Civ. P. The class of clinics represented by DWHO and Summit has been certified pursuant to Rules 23(b)(2) and (3), Fed. R. Civ. P. NOW also represents its women members under the principles announced in Hunt v. Washington Apple Advertising Council, 432 U.S. 333 (1977); see also NOW v. Scheidler, 897 F. Supp. 1047 (N.D. Ill. 1995).

The jurisdiction of the Court over the RICO claims is invoked under 28 U.S.C. § 1331 and 18 U.S.C. § 1964. The Court has supplemental jurisdiction over the state law claim pursuant to 18 U.S.C. § 1367. Plaintiffs' prayers for declaratory relief are authorized by 28 U.S.C. § 2201. Jurisdiction is not disputed.

2. The following stipulations and statements were submitted and are attached to and made part of this Order:

A. An agreed statement of uncontested facts, which will become a part of the evidentiary record in the case and which may be read to the jury by the Court or any party (Exhibit A);

B. An agreed statement of the contested issues of fact and law (Exhibit B) and the parties' respective statements of the contested issues of fact and law not agreed to (Exhibits C and D);[1]

C. Except for rebuttal exhibits, schedules in the form required by the local rules of the United States District Courts for the Northern District of Illinois (Exhibits E, F and G) of:[2]

(1) all exhibits (marked for identification before trial), including documents, summaries, charts and other items expected to be offered in evidence; and

(2) any demonstrative evidence to be offered during trial;

D. Lists of the names and addresses of the potential witnesses each party will call and the potential witnesses each party may call, excluding rebuttal witnesses, with a statement of any objections to calling, or to the qualifications of, any witness identified on the lists (Exhibits H, I and J);

E. Stipulations or statements setting forth the qualifications of each expert witness in such form that the statement can be read to the jury at the time the expert

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[1]Joseph Scheidler, Andrew Scholberg, Timothy Murphy, and the Pro-Life Action League (the "Scheidler Defendants") have neither objected to the Plaintiffs' statement nor offered any of the required statements on their own.

[2]The Scheidler Defendants have failed to make any objections to Plaintiffs' exhibits. The objections of Operation Rescue were not served on Plaintiffs until 3:42 p.m. on January 6, 1998, and thus Plaintiffs have not had an opportunity to prepare a reply.

witness takes the stand (NOT APPLICABLE; the parties do not expect to call any expert witnesses at trial);

F. A list of all portions of depositions to be read into evidence and statements of any objections thereto (Exhibits K, L and M);

G. An itemized statement of special damages (Exhibit N);

H. Waivers of any claims or defenses that have been abandoned by any party (NONE);

I. Because this is a jury trial:

(1) trial briefs (submitted separately by the parties);

(2) a set of jury instructions, verdict forms and special interrogatories agreed to by Plaintiffs and Operation Rescue[3] (Exhibit O), some additional jury instructions proposed by Plaintiffs (Exhibit P), and some additional jury instructions proposed by Operation Rescue, together with Plaintiffs' objections thereto (Exhibit Q); and

(3) a list of the questions that the Plaintiffs and Operation Rescue request the Court to ask prospective jurors in accordance with Rule 47(a), Fed. R. Civ. P. (Exhibit R);

J. A statement summarizing the history and status of settlement negotiations, indicating whether further negotiations are ongoing and likely to be productive (Exhibit S);

K. A statement that each party has completed discovery, including the depositions of expert witnesses (Exhibit T);

L. Subject to full compliance with all the procedural requirements of local General Rule 12(k), all motions *in limine* will be filed separately by the parties. Any briefs in

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[3]The Scheidler Defendants have failed to propose any jury instructions, nor have they objected to any of the jury instructions that were served on them on December 6, 1997.

responses due by January 15, 1998, and replies due by January 22, 1998.

3. Plaintiffs and Operation Rescue anticipate trial of this case will take two to three weeks. The trial will commence on March 2, 1998.

4. This is a jury trial. *6 & 4 DHC*

5. The parties recommend that twelve jurors and two alternates be selected at the commencement of the trial.

6. The parties do not agree that the issues of liability and damages of the class member clinics should be bifurcated for trial.

7. The parties do not consent to this case being reassigned to a magistrate judge for trial.

8. This Order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

9. The possibility of settlement of this case was considered by the parties.

Date: FEB 27 1998

/s/ David H. Coar
Honorable David H. Coar

/s/ Fay Clayton
One of Plaintiffs' Attorneys

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[TAB A]

## STATEMENT OF UNCONTESTED FACTS

1. The National Organization for Women, Inc. ("NOW") is a non-profit organization with over 250,000 members nationwide, whose stated purpose is to advance and protect the legal rights of women.

2. The Delaware Women's Health Organization ("DWHO") is a Florida corporation with its principal place of business in Wilmington, Delaware.

3. Summit Women's Health Organization ("Summit") is a partnership with its principal place of business in Milwaukee, Wisconsin.

[TAB B]

## AGREED STATEMENT OF CONTESTED ISSUES OF FACT AND LAW

Count I -- 18 U.S.C. § 1962(c)

1. Whether PLAN is an enterprise under RICO.

2. Whether PLAN engaged in, or its activities affected, interstate commerce.

3. Whether each of the Defendants was associated with PLAN.

4. Whether each of the Defendants is a "person" under 18 U.S.C. § 1961(3).

5. Whether each of the Defendants conducted or participated in the conduct of PLAN's affairs by participating in the operation or management of PLAN in such a way, directly or indirectly, as to have played some part in directing PLAN's affairs.

6. Whether Defendants' commission of predicate acts constitute violations of the Hobbs Act, 18 U.S.C. § 1951, the Travel Act, 18 U.S.C. § 659, and/or constitute acts, threats, attempts, or conspiracies to violate state laws of extortion, arson, or murder under RICO.

7. Whether PLAN operated through a pattern of racketeering activity.

8. Whether each of the Defendants participated in PLAN's affairs through a pattern of racketeering activity.

9. Whether Plaintiffs, including the class member clinics and the women who sought abortions from those clinics, were proximately injured in their business or property as a result of any of the acts in Factual Issue No. 4 above.

10. Whether PLAN's co-conspirators included the persons listed in the Plaintiffs' Amended RICO Case Statement or any of them (also listed in PX-4).

Count II -- 18 U.S.C. § 1962(d)

11. Whether each of the Defendants agreed among themselves or with any of their co-conspirators to participate, directly or indirectly, in PLAN's affairs through a pattern of the racketeering acts.

12. Whether PLAN's co-conspirators included the persons listed in the Plaintiffs' Amended RICO Case Statement or any of them (also listed in PX-4).

Scheidler Defendants' Eleventh Affirmative Defense -- Unconstitutionality of Nationwide Injunctive Relief

13. Whether the injunction Plaintiffs seek restrains legitimate speech so as to constitute an unconstitutional prior restraint.

Scheidler Defendants' Thirteenth Affirmative Defense and Terry Defendants' Seventh Affirmative Defense -- Res Judicata and/or Collateral Estoppel As Against Plaintiffs Other Than NOW

14. Whether the claims of Plaintiffs other than NOW are barred by res judicata or collateral estoppel.

Scheidler Defendants' Twenty-Second Affirmative Defense and Terry Defendants' First Affirmative Defense -- First Amendment Protection

15. Whether Defendants' expressive activities are entitled to First Amendment protection.

[TAB C]

## PLAINTIFFS' STATEMENT OF CONTESTED ISSUES OF FACT AND LAW

RICO

1. Whether, among other activities, NOW members serve as escorts to patients at women's health centers where abortions are performed.

2. Whether DWHO operates a women's health center that provides abortions, counseling to help patients explore alternatives to abortion, and gynecological services such as pelvic examinations, Pap tests, breast cancer screening, birth control counseling, pregnancy testing, and patient education.

3. Whether Summit operates a women's health center affiliated with DWHO, and also provides abortions, counseling to help patients explore alternatives to abortion, and a variety of gynecological services.

4. Whether Women's health clinics where abortions are performed, such as DWHO and Summit, are engaged in interstate commerce.

5. Whether Joseph M. Scheidler is a resident of Chicago, Illinois, and has been the Director of the Pro-Life Action League, Inc. ("PLAL") at all times relevant to the lawsuit. Scheidler has attended all of the annual conventions of the Pro-Life Action Network ("PLAN"), and has been a featured speaker at each of those conventions. Scheidler and/or the PLAL have organized three or more of the PLAN conventions. Beginning no later than 1987, Scheidler served on the leadership council of PLAN.

6. Whether Andrew Scholberg is a resident of Chicago, Illinois, and was the Assistant Director of the PLAL from February 1988 until approximately 1990. Scholberg attended PLAN conventions in 1987, 1988, 1989, 1990, 1991, 1992, and 1996. He was a featured speaker at the 1987, 1988, 1989, and 1991 PLAN conventions.

7. Whether Timothy Murphy resides in the Chicago metropolitan area. Murphy has been a paid employee of PLAL since September 1988, and before then served as a volunteer. Murphy attended PLAN conventions in 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1996, and 1997. He was a featured speaker at the 1988, 1990, 1991, and 1992 PLAN conventions.

8. Whether PLAL is an Illinois corporation with its principal place of business in Chicago, Illinois.

9. Whether Randall A. Terry is a resident of Windsor, New York. He has been the National Director of Operation Rescue. Beginning no later than 1987, Terry served on the Leadership Council of PLAN.

10. Whether Operation Rescue ("OR" or "ORN") is an unincorporated organization with mailing addresses in Binghamton, New York, and Dallas, Texas, among other places. Beginning in approximately 1990, Operation Rescue adopted the name "Operation Rescue National," and began to use that name as well as "Operation Rescue."

11. Whether, among OR's sponsors are the following organizations and individuals: PLAL and Scheidler; the Pro-Life Direct Action League and John Ryan; Advocates for Life and Andrew Burnett; the Life and Family Center and Andrew Scholberg; the Prolife Nonviolent Action Project and Thomas Herlihy, Michael McMonagle and John Cavanaugh-O'Keefe.

12. Whether, from May 10-12, 1984, Scheidler and others participated in a conference entitled "Action for Life" in Fort

Lauderdale, Florida. Scheidler presented a workshop at the conference. In connection with the conference, a Fort Lauderdale clinic was surrounded, and its entrances and exits were blocked.

13. Whether, in June 1984, Scheidler, PLAL and others met in Kansas City, Missouri, where "blitzes" of abortion clinics were discussed. Following that meeting, on June 9, 1984, Scheidler and about 200 others participated in a blockade of the Planned Parenthood clinic in Kansas City, Missouri, that succeeded in closing the clinic and had the effect of closing four other clinics in the Kansas City area.

14. Whether, on July 21, 1984, Scheidler and others, in an event sponsored by PLAL, entered the Biogenetics clinic in Chicago, Illinois, and obstructed the entrance to examination rooms, in some cases by handcuffing themselves to heating pipes.

15. Whether, in April 1985, the Second Annual Pro-Life Activist Conference, "Action for Life II," was held in Appleton, Wisconsin. A marquee at the conference site said "Have a Blast." At this conference, the attendees gave the network of anti-abortion activists the name "Pro-Life Action Network" ("PLAN").

16. Whether, on March 25, 1986, Scheidler and PLAL participated in a workshop in Pensacola, Florida. The next day, Scheidler and PLAL were present at an event at the Ladies' Center, a Pensacola clinic where abortions are performed, during which others who had attended the March 25 workshop, including Joan Andrews and John Burt, invaded the clinic.

17. Whether, on April 11, 1986, Scheidler entered the DWHQ clinic without permission and made a threat to the clinic administrator; he made additional threats publicly thereafter.

18. Whether, later in April 1986, Scheidler and PLAL participated in the Third Annual PLAN Convention in St. Louis, Missouri. Clinic blockades, referred to as "rescues" or "sit-ins," were planned at the convention.

19. Whether, on April 19, 1986, in connection with the PLAN convention, a St. Louis, Missouri, clinic that performs abortions was blockaded. In November 1986, Scheidler, Terry and Scholberg attended a meeting of anti-abortion activists and participated in a blockade of the Ladies' Center in Pensacola, Florida. Shortly thereafter, Terry, Scheidler, Scholberg, and others met to discuss the forming of Operation Rescue.

20. Whether, on December 14, 1986, a PLAN mini-conference was held in St. Louis, Missouri, attended by Scholberg and others.

21. Whether, from April 30, to May 2, 1987, Scheidler, PLAL, Scholberg, Murphy, and others took part in the Fourth Annual PLAN Convention in Atlanta, Georgia. Scheidler, Terry, and Scholberg spoke at the convention. Andrew Burnett and Peter Lennox also spoke at the convention.

22. Whether the Operation Rescue concept was discussed at the 1987 PLAN Convention.

23. Whether, at the 1987 PLAN Convention, a leadership council was discussed and organized. The Leadership Council met during the 1987 PLAN Convention.

24. Whether the 1987 PLAN Convention activities included the blockade of a women's health clinic in the Atlanta suburb of Chamblee, Georgia.

25. Whether, in the summer and fall of 1988, Operation Rescue conducted blockades at clinics in the Atlanta, Georgia, area.

26. Whether the Leadership Council of PLAN met on August 21, 1987, in Washington, D.C.

27. Whether, from August 25-27, 1988, Scheidler, Scholberg, Murphy, Terry, and PLAL took part in the Fifth Annual PLAN Convention in Chicago, Illinois. Terry, Murphy, Scheidler, and others spoke at the meeting.

28. Whether, on the last day of the 1988 PLAN convention, a Chicago clinic was blockaded using a tactic known as a "lock and block," in which Murphy and another co-conspirator locked themselves to concrete blocks placed in front of the clinic's entrance. Murphy was arrested in connection with this blockade.

29. Whether, from May 2-6, 1988, blockades sponsored by Operation Rescue were conducted at clinics in New York City and Hicksville, Long Island. Scheidler and Scholberg were appointed marshals of the "rescues" by the organizers. At the time, Scheidler said, in substance, that he was there to see how the New York action was done, since they expected to do a massive rescue in Chicago as well. Murphy and Terry personally participated in blocking the entrance to clinics, which succeeded in closing the clinics. Terry, Murphy, and Scholberg were among the hundreds of persons arrested during the blockades.

30. Whether, in March 1989, Scheidler participated in a blockade of the Feminist Women's Health Center in Chico, California, and was arrested.

31. Whether the Sixth Annual PLAN Convention was held in 1989 in the Detroit, Michigan, area (i.e., Livonia, Michigan). Its activities included "field training" at a women's health clinic in the area, which included a blockade of the clinic.

32. Whether the Seventh Annual PLAN Convention was held in 1990, in Jackson, Mississippi. Its activities included the blockade of a women's health clinic in the area.

33. Whether, in 1991, in Dobbs Ferry, New York, a week-long series of clinic blockades took place, which were organized by OR.

34. Whether the Eighth Annual PLAN Convention was held in Wichita, Kansas. Its activities included "field training" at women's health clinics in the area, which included blockades of the clinics. The convention was followed by an entire summer of blockades of Wichita, Kansas, clinics, where thousands were arrested. This "Summer of Mercy" was sponsored and organized by PLAN.

35. Whether the Ninth Annual PLAN Convention was held in 1992, in San Antonio, Texas. Its activities included "field exercises" at a women's health clinic in the area, which included a blockade of the clinic.

36. Whether the Tenth Annual PLAN Convention was held in 1993, in the Denver, Colorado, area.

37. Whether a meeting of persons involved in the movement to oppose abortion through the use of "direct action" was held in Lincolnwood, Illinois, in 1994.

38. Whether the PLAN convention for 1996 was held in Chicago, Illinois, from March 12-14, 1996. Convention participants discussed plans for activities, including rescues, to occur in Chicago during the 1996 Democratic National Convention.

39. Whether, during the 1996 Democratic National Convention, the Division West clinic in Chicago was blockaded. The clinic decided to forego its right to perform abortions in exchange for the blockaders to leave the premises.

40. Whether the PLAN convention for 1997 was held in Milwaukee, Wisconsin, from September 11-13, 1997. Scheidler and Donald Treshman were among the speakers.

41. Whether, in 1988, Murphy, and others removed fetal remains from the loading dock at Vital-Med Laboratories, Inc. in Northbrook, Illinois. Scheidler, Murphy, Scholberg, and others then arranged for storage of the remains for a period of time, and then for the transportation of the fetal remains to other locations throughout the country, via United Parcel Service and private car.

42. Whether the fetuses removed from Vital-Med were shipped by a network of co-conspirators to North Carolina; Milwaukee, Wisconsin; Fargo, North Dakota; Chicago, Illinois; Fort Wayne, Indiana; Wilmington, Delaware; and Tallahassee, Florida, for highly-publicized burials.

43. Whether, in news stories about the fetuses taken from Vital-Med, Scheidler stated that the fetuses had been found at a laboratory in Chicago and that they were "individually packaged and labelled . . . with the names of the mothers, doctors, dates and places the abortions were performed." On another occasion, Scheidler confirmed publicly that the fetuses came from Vital-Med.

44. Whether approximately 700 of the fetuses originated from Summit and another Milwaukee clinic, and some originated from DWHO.

45. Whether each of the individual Defendants has been arrested and convicted for his activities at two or more women's health clinics.

46. Whether, in addition to blockades conducted in conjunction with PLAN conventions, numerous blockades took place at clinics in Milwaukee, Wisconsin (including Summit), and in Fargo, North Dakota, and Melbourne, Florida, during the class period.

47. Whether, on March 10, 1993, Dr. David Gunn was murdered by Michael Griffin outside the Pensacola Women's

Medical Center. John Burt was in the vicinity of the clinic at the time of the murder.

48. Whether, on August 20, 1993, Rachelle ("Shelly") Shannon shot and attempted to kill Dr. George Tiller outside his clinic in Wichita, Kansas.

49. Whether, on July 29, 1994, Paul Hill murdered Dr. Bayard Britton and Mr. James Barrett, and wounded Mrs. June Barrett outside the Pensacola Ladies' Center.

50. Whether numerous arsons, fire bombings and butyric acid attacks were committed against class member clinics throughout the class period.

51. Whether, from 1984 to the present, PLAN conducted activities to interfere with the business and property of the Plaintiff Clinics and their patients. Some of these included "National Days of Rescue," where clinics at multiple cities across the country were blockaded at the same time.

52. Whether the Defendants and their co-conspirators committed predicate acts in the following states: California, Colorado, Delaware, Florida, Georgia, Illinois, Kansas, Michigan, Mississippi, Missouri, New York, North Carolina, North Dakota, Oklahoma, Oregon, Texas, and Wisconsin, among others, as well as in Washington, D.C.

53. Whether each Defendant agreed that two or more of the following would be committed by persons associated with PLAN from 1984 through the present:

(1) A forcible blockade of a clinic where abortions were performed;

(2) The threat to forcibly blockade a clinic where abortions were performed;

(3) An attempt to forcibly blockade a clinic where abortions were performed;

(4) An agreement with others to forcibly blockade a clinic where abortions were performed;

(5) The destruction of property in a clinic where abortions were performed;

(6) The threat to destroy property in a clinic where abortions were performed;

(7) The attempt to destroy property in a clinic where abortions were performed;

(8) An agreement to destroy property in a clinic where abortions were performed;

(9) The commission of physical violence against any person to prevent clinics from providing abortions;

(10) The threat to commit physical violence against any person to prevent clinics from providing abortions;

(11) The attempt to commit physical violence against any person to prevent clinics from providing abortions;

(12) An agreement to commit physical violence against any person to prevent clinics from providing abortions;

(13) The wrongful use of force, violence, or fear against clinics, their personnel, their doctors, or their patients;

(14) The threat of a wrongful use of force, violence, or fear against clinics, their personnel, their doctors, or their patients;

(15) An act of arson;

(16) A threat involving arson;

(17) A threat involving murder;

(18) The theft of fetal remains from the laboratory that performed pathology services for clinics where abortions are performed;

(19) Interstate travel and/or the use of facilities in interstate commerce with the intent to commit any of the acts listed above in this Factual Issue No. 4.

* * *

[TAB D]

## DEFENDANT OPERATION RESCUE'S CONTESTED ISSUES OF LAW AND FACT

### Count I - 18 U.S.C. § 1962(c).

1. Operation Rescue is an unincorporated association founded by Randall Terry in 1987. Whether this organization is a personal ministry of Randall Terry who, with the exception of a brief period in 1989, served as the Executive Director and the person solely responsible for its day-to-day operations.

2. Whether the name "Operation Rescue" was selected from a passage of scripture in the Old Testament found in the book of Proverbs at Chapter 21, verse 11, which reads: "Rescue those who are unjustly sentenced to death: do not stand back and let them die."

3. Whether, as the founder and leader of Operation Rescue, Randall Terry denounced the use of violent tactics in opposing abortion.

4. Whether individuals invited to participate in Operation Rescue events were asked to sign a pledge committing to non-violent and peaceful conduct.

5. Whether, in the late 1980s and early 1990s, the term "Operation Rescue" or "Rescues" became synonymous with a grass roots segment of the pro-life movement.

6. Whether, over the last decade, since 1987, there have been several pro-life groups which have used, as part of their name, "Operation Rescue." These groups and organizations had no formal ties or association (except in name only) with the Operation Rescue founded by Randall Terry.

7. Whether at no time during or after Randall Terry's involvement with Operation Rescue did he serve as a leader, organizer, board member or officer of any organization called Pro-Life Action Network.

8. Whether Operation Rescue has, throughout its existence, advocated peaceful, non-violent opposition to abortion.

9. Whether PLAN had a structure and goals which were separate and distinct from any predicate acts which formed the basis of the RICO claim.

10. Whether the Operation Rescue founded by Randall Terry in 1987 has conducted any activities since 1991.

11. Whether the defendant Operation Rescue is a "person," as that term is used in 18 U.S.C. § 1961(3).

12. Whether Operation Rescue's activities, which are alleged as a basis for any claim under 18 U.S.C. § 1962(c), are protected under the First Amendment of the United States Constitution.

13. Whether any women were "turned away" from DWHO or Summit as a result of Defendant Operation Rescue's clearly protected activity of sidewalk counseling or as a result of any blockade.[1]

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[1]See NOW v. Scheidler, 1997 WL 610782 (N.D. Ill. Sept. 23, 1997), at *17, FN23.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| NATIONAL ORGANIZATION FOR WOMEN, INC., et al., | ) |
| | ) No. 86 C 7888 |
| Plaintiffs, | ) |
| | ) Judge Coar |
| v. | ) |
| | ) Magistrate Judge Lefkow |
| JOSEPH M. SCHEIDLER, et al., | ) |
| | ) |
| Defendants. | ) |

ORDER OF FINAL APPROVAL OF
PARTIAL SETTLEMENT BETWEEN
PLAINTIFFS AND RANDALL A. TERRY

In accordance with the findings and conclusions stated in the hearing on this matter on February 18, 1998, and pursuant to the Joint Motion for Preliminary Approval of Partial Settlement that has been made by counsel for the Plaintiffs and for Randall A. Terry on January 5, 1998,

IT IS HEREBY ORDERED:

1. The Court hereby approves the settlement (the "Settlement Agreement") entered into between Plaintiffs, the National Organization for Women, Inc., as representative of its women members and the certified class of its non-members, and the Delaware Women's Health Organization, Inc. and Summit Women's Health Organization, Inc., on their own behalf and on behalf of the Certified Class of clinics ("Plaintiff

Clinics"), on the one hand (the "Plaintiffs"); and Defendant Randall A. Terry ("Settling Defendant") on the other hand (collectively, the "Settling Parties"). The Court has determined that the Settlement is fair, reasonable and adequate, and in the best interests of the Certified Classes.

2. Pursuant to Paragraph 2 of the Settlement Agreement, it is hereby ordered that each side will bear its own costs and attorneys' fees with regard to the resolution of this matter between the Settling Parties.

3. Pursuant to Paragraph 3 of the Settlement Agreement, Randall A. Terry is hereby enjoined from interfering with the right of the Plaintiff Clinics to conduct their business (including but not limited to abortion), or the claimed right of women to avail themselves of the Plaintiff Clinics' services (including but not limited to abortion), by blockading the entrances by any means whatsoever; trespassing on the property of a Plaintiff Clinic; destroying or stealing the property of a Plaintiff Clinic; using violence or the threat of violence against any Plaintiff Clinic or any of its employees or volunteers, or against women who seek to use the services of such a Clinic; engaging in any other unlawful practice intended to prevent women from exercising their claimed right to have an abortion and/or prevent the Plaintiff Clinics from providing such services to women; or organizing, inciting or encouraging others to do any of the acts enumerated in this paragraph, or participating in an enterprise that engages in any of these acts (the "Acts").

4. Nothing contained in the Settlement Agreement, nor the action of the Settling Parties by entering into it, shall constitute, be construed as, or be deemed to be an admission of fault, liability or wrongdoing, or the absence of fault, liability or wrongdoing by the Settling Defendant.

5. In the event that Randall A. Terry should, at any time after the entry of this Order, engage in one of the Acts proscribed in Paragraph 3 above, he may be subject to both civil and criminal prosecution, including prosecution under the Freedom of Access to Clinic Entrances Act of 1994 (FACE), 18 U.S.C. § 148, and to the reopening of this case to permit the Plaintiffs or any of them to prosecute him and seek injunctive relief from him, together with all monetary damages and legal fees and costs for the allegations that are the subject of this lawsuit. In the event that Randall A. Terry commits any of the Acts proscribed in ¶ 3 above, a judgment in the amount of $15,000.00 shall be entered against him as liquidated damages for each such act which he is found to have committed.

6. Neither this Order nor the Settlement Agreement releases or discharges any other defendant or any other individual who is or was affiliated or associated with the Settlement Defendant from liability for the conduct alleged in Plaintiffs' Third Amended Complaint.

7. Neither this Order nor the Settlement Agreement vacates, vitiates, abrogates or affects in any manner any prior judgment, decision or order that has been entered against Randall A. Terry in any other case or proceeding in any federal or state court, or other tribunal; nor does it release any claims between Randall A. Terry and any Plaintiff Clinic or any member or non-member of NOW that is now pending in any other court or tribunal, whether state, federal or otherwise.

8. This Court shall retain jurisdiction over the Settlement Agreement for twelve (12) years from the date of entry of this Order to enforce its terms and conditions.

ENTER:

Dated: February 18, 1998. /s/ David H. Coar
Honorable David H. Coar
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 592 (PA 169): transcript
from portion of Randall Terry's videotape
where he defines "rescue"]

## RANDALL TERRY'S DEFINITION OF "RESCUE"

"Making [a clinic] inaccessible . . . by placing our bodies around it, in it, somewhere on the premise so that [women] cannot get in . . . . Or it could include, on the stretching end, our bodies and our cars, our bodies and kryptonite locks, [or] our bodies and chains."

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 670 (PA 183) (excerpts): Joe Scheidler's letter dated March 31, 1986 to Dow Pursley (italicized material was handwritten in original)]

* * **Had a glorious time in Pensacola FL last week -- shut down an abortuary for a couple of days by dismantling the suction machine.** * * *Joe*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Plaintiffs' Exhibit 680 (PA 185): Joe Scheidler's letter dated May 21, 1986 to J. Daniel Bray]

**PRO-LIFE ACTION LEAGUE**
Joseph M. Scheidler, Director, 6160 N. Cicero Ave., Chicago, IL 60646 Office (312) 777-2900 Newsline (312) 777-2525

J. Daniel Bray
Michael Bray Defense Fund
P.O. Box 459
Bowie, MD 20715

May 21, 1986

Dear Dan,

I just read Mike's article and can't find fault with it. It's really about as basic as you can get. As you are aware I have refused to condemn the bombings and have been roundly criticized for that stand. But neither have I condoned them, and some have pointed out that this is inconsistent and not true – if you don't condemn the bombings then you do, in fact, condone them – just as we argue that if you will not condemn abortion then you are condoning it.

My answer is that some things need not be considered so serious that failure to condemn automatically implies acceptance. I consider an abortion facility to be a moral evil, with no moral right to exist. What goes on inside is so

despicable that when the abortuary ceases to function a moral good has replaced it. How it ceases to function is not as important as the fact that it has ceased. Therefore I am indifferent to the means. The loss of "real estate" is trivial compared to the loss of lives in that real estate.

But I am not doing any bombing because I have found another means of shutting down abortion facilities. We calculate that we (non-violent direction action) have closed 40 abortuaries and convinced about 12 to 18 abortionists to quit doing abortions during the past two years.

I readily admit that the thirty or so attacks on abortuaries has helped close down clinics. The list of good results that has come from the violence is clear and probably much more extensive than your tally indicates.

I am not into using "violence", and I hardly think it is violence, since it is against brick and glass and not people – partly because I believe for me to go this route would be a clear admission that I do not have confidence in the efficiency of non-violent direct action – and I still do believe non-violence is effective.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Trial testimony excerpts]

* * *

[1683]

* * *

SUSAN WICKLUND, PLAINTIFFS' WITNESS,
DULY SWORN
DIRECT EXAMINATION

BY MS. CLAYTON:

Q. Dr. Wicklund, would you please tell the jury your full name.

A. Susan Marie Wicklund.

Q. What is your profession?

A. I'm a medical doctor.

Q. Would you tell us a little bit about your background up through medical school.

A. I was born in northern Wisconsin in a very rural area. Lots of family, who are all still in the same area. Left at 18 and

worked a number of jobs around the country. Eventually went to University of Minnesota, got a degree in [1684] biology and then went on to medical school at the University of Minnesota.

Q. Where did you do your medical internship?

A. In Portland, Oregon at Oregon Health Sciences University.

Q. Would you tell us what your medical internship was in and what it included.

A. It was in OB/GYN, and I guess most importantly what it included was abortion training, and that was because I looked at residency internship programs specifically that taught how to do abortions. And it wasn't very many around the country. That's why I ended up in Portland.

Q. What do you after finishing your medical internship in Portland -- oh, in what year was that that you finished your internship?

A. In 1988.

Q. And would you tell the ladies and gentlemen of the jury what you did right after you finished that.

A. I went back to my hometown in Wisconsin and practiced medicine, general practice with another physician for about a year, a little over a year, a year and three months I guess is how long I was in Grantsburg.

Q. What was the name of the clinic and hospital that you worked in in Grantsburg?

A. Burnett General Medicine.

Q. Would you tell us a little bit about your work at that [1685] clinic and hospital.

A. It was a real small hospital. It usually had a census of 6 to 10 people in the hospital at any given time, but it was a community run and based clinic and hospital. I knew everybody. I had grown up there. A lot of the nurses I worked with were people I had gone to school with. And it was the only clinic and medical center in the whole entire county, which was a population of about 10,000 people.

One of the things that happened when I got there is that the hospital board the night before I came met and decided that they wouldn't allow me or anyone else to do any abortions at the clinic or hospital. And they did that because it was a physician that had been there for a number of years --

MR. CRAIN: I just object to the relevance of all of this.

THE COURT: I'll overrule. Go ahead.

BY MS. CLAYTON:

Q. You may continue, Dr. Wicklund.

A. The physician who was there had been performing D & C's, which is another way of saying abortion without using the

word abortion for many years. And because he hadn't called it abortion, the clinic or the community had put up with it, so to speak. But when I came, they knew I would continue doing what he had been doing as part of my entire scope of [1686] medical practice, but I would call it an abortion because I didn't want it to be perceived as bad or illegal or anything else. It was a legal safe procedure.

Q. Did you say it was legal or illegal at that point?

A. It was legal.

Q. It was legal then?

A. Yes.

Q. Now, after this hospital board had voted and imposed a rule that no more abortions would be done in the clinic, did patients continue to come to you seeking abortions?

A. Certainly. Lots of woman would come with unwanted pregnancies. Many of whom I knew or had known all my life. I had to send them to clinics in Minneapolis/St. Paul or farther, which was at least two hours for them to travel to receive services since I was not allowed to do them at that facility.

Q. What were the reasons for their need for abortions at that time?

MR. BREJCHA: Your Honor, object. Relevancy.

THE COURT: I will sustain that objection.

BY MS. CLAYTON:

Q. Tell us what kind of women came to you seeking abortion service during that period of time.

A. All kinds of women. It goes across all ages and socioeconomic barriers, educations, races. There was no [1687] stereotype.

Q. Did there come a time -- did there come a time when you, in fact, started performing abortions?

A. Yes. I had been trained and was real frustrated that they weren't allowing me to include that as part of my full medical care. So I was active in abortion rights as far as reading and talking about it, but went to a march in Washington D.C. in April of '89 with my daughter and some friends.

And during that March became motivated largely due to a speech that I heard by Molly Yard, who was then president of the National Organization of Women.

Q. What was it about Molly Yard's speech that caused you to start performing abortions?

A. Molly basically said that there are those of us --

MR. CRAIN: I object to what Miss Yard said as hearsay.

THE COURT: I'm sorry?

MR. CRAIN: I object to what Miss Yard said as hearsay.

THE COURT: I'll sustain that objection.

MS. CLAYTON: I don't think this is calling for hearsay, Your Honor, but I will rephrase the question just to make sure.

BY MS. CLAYTON:

[1688]

Q. Without actually repeating what words Miss Yard said, would you tell us what it was about her speech that caused you to feel you wanted to start performing abortions.

MR. CRAIN: Same objection.

MS. CLAYTON: It's not being offered for the truth of the matter, Your Honor.

THE COURT: I'm going to sustain the objection on relevancy grounds. If we could move on.

BY MS. CLAYTON:

Q. Okay. Let's move on to what you did after that speech.

After you heard Miss Molly Yard give that speech in Washington -- by the way, what year was that?

A. '89, April.

Q. What did you do after you came back?

A. Because I felt a real call to do -- to use my services, what I was trained to do, I decided that I needed to find out if there was a need for more abortion providers in our area. So I made a phone call to one of the clinic directors in Minneapolis/St. Paul and asked her. And she said there was a desperate need, that there had been a lot of clinics that were not being able to stay open as many days a week as they needed to be because they didn't have enough abortion providers.

She called a meeting then of local -- local, and I'm meaning a three-state area clinic directors to come and meet [1689] me, and we all had a meeting and I found out that there was a desperate need for more abortion providers in quite a large area.

Q. Now, after going to this meeting with people who were working in the various clinics, how did you personally go about selecting the clinics that you would end up working with?

A. Because I had grown up in a rural area and knew how hard it is for people in outlying areas to receive services of any kind in medicine, that was my criteria was choosing places that were serving women and that had not many other services available.

Q. Why were you so determined to make abortion available to these woman?

A. Because it was a legal safe procedure, and I think it helped save women's lives.

Q. Now, at the clinics that you ended up assisting by providing abortion services, was counseling made available to them in

connection with their making a decision as to whether or not to have an abortion?

A. Certainly. Counseling is available at any clinic that I would work at. That's a mandatory -- or a given part of the whole procedure.

Q. Is that something that you personally required before you would work there?

[1690]

A. Absolutely.

Q. Let's talk about the clinics that you actually ended up serving.

Which was the first one that you began to work with to provide services including abortions?

A. The first clinic I started working at was Summit Women's Health in Milwaukee.

Q. And during what period of time did you work at Summit?

A. It was the summer of '89 to the fall of '92.

Q. Was Pam Clark, our clinic representative, was she there during part of that time?

A. Pam is not someone I remember from Summit. I think she worked at another facility in the Milwaukee area.

Q. During that period of time?

A. Yes.

Q. Are you aware that that Summit clinic that you worked in is one in the plaintiffs in this lawsuit?

A. Yes, I am.

Q. Let's focus on your experience there. Would you tell us what happened during the period when you went to Summit to provide abortion services.

A. Well, it was my first experience with protestors when I first got to Summit. And for a long time they didn't realize I was a physician working there because, of course, most of the physicians are male and they assumed I was another woman [1691] coming into the clinic for an abortion.

So there was the usual harassment of yelling and whatnot. Eventually it became much more intense in that there was a lot of clinic blockades. Clinic doors were blocked. People were sitting down in front of the doors preventing patients and staff and often myself from getting in to be able to go to work or to have a procedure done.

Q. On approximately how many times over the two or three years that you worked at Summit were you physically blockaded from getting into the clinic for some period of time?

A. Oh, many times. I can't put a number to it.

Q. Did you learn the names of some of the people who were either leading those blockades or participating in them?

A. Yes, I did. There was some of the people --

MR. BREJCHA: Your Honor, can we have a foundation before we rattle off a list of names.

THE COURT: Let's have a foundation.

BY MS. CLAYTON:

Q. If you can answer the question all at once before we identify the individuals, would you tell us how you learned the names of the individuals who were either physically blockading or leading the blockades that occurred at Summit.

A. The director at that time was a Joy Warfield, and sometimes I'd stand in the window upstairs and point out people and ask her who they were. Other times I would stand [1692] downstairs with some of the police officers and talk to them and ask them who various protestors were.

Q. Were there other ways that you learned the names of the protestors or the leaders of the protests?

A. Some of their publications. They have pictures of themselves, and you can identify them out front, television.

Q. Did you see some television interviews with some of the people who were blockading the clinic?

MR. CRAIN: Objection to leading, Your Honor.

THE COURT: All right. Please don't lead.

BY MS. CLAYTON:

Q. Did you see -- describe the television coverage that you are referring to.

A. Many times it would be the news. I would go back to the motel room after a night at the clinic and see on the news a cast of the people sitting down in front of the clinic. The one person that I was able to identify on the news was a woman whose first name was Monica and Matt Trewhella.

Q. You made reference to the newsletters and sources from certain of the anti-abortion forces themselves. Would you tell us whether you monitored any of their media.

A. Yes. There was a phone number that I would sometimes call just to find out what was going on or where there might be protests more at one time than another. And it was a phone number that had the voice of -- he identified himself [1693] as Joe Scheidler.

Q. Would you tell us which of the blockaders or leaders of the blockades you identified through the following sources, either seeing them interviewed on television, recognizing them from their own publications. We'll start with those two.

A. Okay. I guess the only person that would fall into that category would be Joe Scheidler.

Q. Did you later learn the name of the woman whose first name was Monica?

A. Yes.

Q. And what was her last name?

A. Migliorino.

Q. Was that the same woman who later married and took the name Miller? Do you know?

A. From the publications I understand -- I see her name hyphenated with Miller at the end.

Q. Were there any others that you came to identify?

A. Matt Trewhella.

MR. BREJCHA: Your Honor, object to the lack of specific foundation. It's just a lot of generalities.

THE COURT: If you want to make a speech, Mr. Brejcha, we'll have a side bar. If you make the objection, make the objection.

MR. BREJCHA: Lack of foundation, Your Honor.

[1694]

THE COURT: The objection is sustained. Let's have more foundation.

BY MS. CLAYTON:

Q. How did you learn the name of Miss Migliorino or Monica Migliorino Miller?

A. I learned her name through Joy Warfield.

Q. Was there any other source for learning her name?

A. Just in the publications with her name in that.

Q. Were these publications --

MR. BREJCHA: Your Honor, move to strike the identification as hearsay.

MS. CLAYTON: I'm continuing with the identification, Your Honor.

THE COURT: Go ahead. Motion's denied.

BY MS. CLAYTON:

Q. Did you see her picture and her name listed in publications of the Pro-Life Action League in Chicago?

A. I'm sorry. Would you say that again.

Q. Did you see Miss Miller or Miss Migliorino's picture in publications of the Pro-Life Action League, which was out of Chicago?

A. No.

MR. BREJCHA: Your Honor, objection, leading.

THE COURT: Please don't lead, Miss Clayton.

MS. CLAYTON: The witness said she didn't, Your [1695] Honor. I'm just trying to lay the proper foundation.

BY MS. CLAYTON:

Q. Let's focus on Mr. Scheidler --

THE COURT: Just a second, Miss Clayton. Don't lead.

MS. CLAYTON: Okay. I'll try not to, Your Honor. I was just suggesting that since the witness said no, it suggested I probably wasn't leading.

BY MS. CLAYTON:

Q. Let's focus on Mr. Scheidler.

THE COURT: It's leading whether the answer is yes or no. Don't lead.

MS. CLAYTON: Okay. I'll try to be careful with that.

BY MS. CLAYTON:

Q. Would you tell us what you saw Mr. Scheidler doing at the Summit clinic.

MR. BREJCHA: Objection, no foundation that she saw him doing anything at the Summit clinic. She recognized the name and called his phone number.

THE COURT: Just a second. Let's have a side bar.

(Side bar conference:)

THE COURT: This is the last time, Mr. Brejcha. Make your objection. Don't state your reasons. The next time you do that I am going to cite you for contempt. The [1696] rules require that an objection be argued outside of the presence of the jury, not stated for argument purposes in front of the jury. You have done that repeatedly. I have cautioned you. This is the last caution I will issue. Let's proceed.

MR. BREJCHA: Your Honor, I did not think I was violating your order. I beg the Court's pardon.

THE COURT: You are now on notice.

MR. SACHNOFF: May I ask one more question. I notice Your Honor has sustained an objection to leading after the witness has exhausted her recollection. It's my recollection of the rules of evidence that once a witness has exhausted his or her recollection it's permissible to ask a leading question.

THE COURT: Do you have some support for that? I'd like to see it. In the meantime we will proceed.

MR. BREJCHA: Your Honor, if the Court please. I don't want to do anything to cause upset to the Court. It is my duty

to state specific objections so that the grounds are clear to the Court. I want to know where the line is drawn since Your Honor's warned me about contempt.

THE COURT: Arguing -- in effect arguing the basis for the objection is improper. If the objection is irrelevant, then a simple statement of relevance. If the objection is leading, then a statement of leading. You are [1697] going much much beyond that.

MR. BREJCHA: Your Honor, in this case my objection was to lack of foundation.

THE COURT: Then simply stating lack of foundation is sufficient. If I don't understand the basis of the objection, I will ask for a side bar.

MR. BREJCHA: Understood, Your Honor.

(Before the jury:)

BY MS. CLAYTON:

Q. Miss Wicklund, you mentioned in your list of people who you've learned to identify a Joseph Scheidler. Can you identify Mr. Scheidler in the courtroom here today?

A. Yes, he's sitting over there.

MS. CLAYTON: May the record indicate that Dr. Wicklund has identified Joseph Scheidler.

THE COURT: The record will so reflect.

BY MS. CLAYTON:

Q. Would you tell us during the time you worked at Summit from 1989 to 1992 on approximately how many occasions you saw Joseph Scheidler at the Summit clinic?

MR. BREJCHA: Objection, leading, Your Honor.

THE COURT: Overruled.

THE WITNESS: Joseph Scheidler -- can I talk first about the first time that I saw him?

BY MS. CLAYTON:

[1698]

Q. We can start with the first one, yes.

A. Okay. I had come into the clinic and there had been a large protest out front. I had gotten into the back and came upstairs and was looking out the window, and there was a man all dressed in black with a bullhorn and was directing and showing people which way to -- well, I don't know if he was -- what he was doing was holding a bullhorn and then he would wave his arms.

THE COURT: Excuse me. The question was how many times. And now we are going into a description of a particular time. That's not responsive.

BY MS. CLAYTON:

Q. Let me state a new question.

THE WITNESS: Okay. There was a reason for going that way, Your Honor. I'm sorry.

THE COURT: Well --

BY MS. CLAYTON:

Q. Thank you, Dr. Wicklund. Let's start with the first question then first. If you can just tell us the number of approximately how many times you saw Joseph Scheidler at the Summit clinic altogether, your best estimation.

A. My best estimation would be between 5 and 10.

Q. Let's focus on the first occasion now. And would you tell us what you saw and what was occurring on that occasion when you saw Mr. Scheidler.

[1699]

A. There was a number of people sitting down in front of the door. And as the police would come and take them away -- identify them and take them away, then he would wave his arm and there would be more people that would come and go down in front of the door. It was obvious to me that he was directling what people's actions were in regards to blockading the doors.

He was a very -- always stayed on the other side of the street and was an intimidating -- very large man and always dressed in black or all in white. But many times after that when there was blockades and I would come in the back and they would tell me that there was a blockade going on, of course, I would --

MR. BREJCHA: Objection, Your Honor.

THE COURT: Sustain the objection.

MR. BREJCHA: Hearsay.

BY MS. CLAYTON:

Q. Let's just make sure -- we're going to take it one incident at a time. I know this is the way the law process works as opposed to the medical, so let's make sure we've covered all the details about the first incident.

A. Okay. Okay.

Q. Was there anything else about the first time you saw Mr. Scheidler that you recall specifically other than what you've already told the jury? Anything else that was going on or [1700] anything else that he was doing on that occasion?

A. No.

Q. And approximately when was that to the best of your recollection?

A. It would have been '90 or '91.

Q. And how long was the clinic blockaded on that occasion, if you can recall?

A. I remember we didn't see any patients till after noon, and we generally saw patients by 9 or 10.

Q. Let's move on to the next occasion that you recall when you saw Mr. Scheidler. Tell us what was happening on that day.

A. A similar occasion. He was dressed in white instead of black, but what was -- for me what was different about it was the number of people. There was a lot more people and other blockades going on at other clinics at the same time in the city.

Q. Now, are you able to estimate in any way how many people were in the crowd that was blockading the clinic on either the first or second occasion?

A. At least a dozen in front of the door at any given time, but there would be other people waiting that would come and block the door after it was cleared the first time. So it was kind of a wave of people that would come and go.

Q. Can you estimate how big the entire wave of people was on [1701] either the first or the second occasion.

A. 50 to 75. I don't know.

MR. BREJCHA: Objection, asked and answered.

THE COURT: Overruled.

BY MS. CLAYTON:

Q. Your best estimate is 50 to 75?

A. Yes.

Q. Was it more on the second occasion than that?

A. Yes.

Q. Can you estimate how many on the second occasion?

A. I'm not very good at estimating crowds. I'm sorry.

Q. On the other occasions when you saw Mr. Scheidler can you describe to us either specifically in the aggregate what he was doing on that occasion?

A. I can't. It became real upsetting for me to go out and watch, so I would avoid looking outside and watching. I would just concentrate on taking care of my patients.

Q. Did you ever have any advance notice that Joseph Scheidler was coming to your clinic in Milwaukee, to the clinic where you were working?

A. Yes, both through the telephone line that I would listen to and then sometimes we'd get advance warning through our clinic director.

Q. Now, the telephone line that you referred to is which telephone line, which organization or individual did that?

[1702]

A. Pro-Life Action Network.

Q. Was that the group in Chicago? Was it a Chicago number you called?

A. You know, I don't know what the area code is --

MR. BREJCHA: Objection, leading, Your Honor.

THE WITNESS: I don't know what the area code was. I'm sorry.

THE COURT: I am going to overrule the objection. Miss Clayton, please don't lead.

MR. BREJCHA: May I also add lack of foundation, Your Honor, in what she stated.

THE COURT: Overrule the objection.

BY MS. CLAYTON:

Q. Do you recall who it was that recorded the telephone line that you telephoned from time to time?

A. He always identified himself as Joe Scheidler and would say at the end thank you for calling Pro-Life Action News.

Q. And approximately how often did you dial Mr. Scheidler's Actions News?

A. A couple dozen times at least.

Q. Was there any other leader of Operation Rescue that ever came to the Summit clinic to your knowledge?

MR. BREJCHA: Your Honor, I object to the form of the question.

THE COURT: I am going to overrule the objection.

[1703]

BY MS. CLAYTON:

Q. You may answer.

A. If you ask specifically about a leader of Operation Rescue, I think Operation Rescue and Pro-Life Action Network they all seemed to be one. And so to me a leader of one is a leader of all of them. And it's hard for me to break them apart. Keith Tucci had identified himself as a leader of Operation Rescue.

MR. BREJCHA: Objection. Move to strike, lack of foundation. Hearsay.

MR. CRAIN: Move to strike.

THE COURT: I'm going to grant the motion. The jury will disregard the answer.

BY MS. CLAYTON:

Q. What was your basis for believing that Mr. Tucci was a leader of Operation Rescue?

A. Their own publications.

Q. Were those something -- how did you happen --

A. I frequently would look at the publications. We would get them at the clinic, so we would sit and look at it, and they identified him. Randall Terry was somebody that was obviously involved.

Q. Did Mr. Tucci come to the Summit clinic while you were working there?

A. I didn't see Mr. Tucci.

[1704]

Q. During the time when Joseph Scheidler was at the Summit clinic, how did his presence and the presence of the blockade affect you?

A. It's very frightening to have that many people who were obviously that angry about something that you're doing be out in front and trying to stop the entire process. It was horrifying. The only way to get in the clinic was to walk in the clinic, and there was a lot of times I'd be at a restaurant about three blocks away just sitting in the morning trying to work up enough nerve to face it and to come down and walk through the barrage of

people and listen to the shouts and wonder if there was going to be violence that day or if it was going to be kind of like a frenzy if something would happen that hadn't yet. I guess it was always real scary.

MR. BREJCHA: Your Honor, move to strike. Lack of foundation, speculative.

THE COURT: Overruled.

BY MS. CLAYTON:

Q. On those occasions was there ever physical contact between the blockaders and you or the vehicle in which you were arriving?

A. Yes. Lots of times if I came directly from the airport -- it was on a Thursday. If we had clinic on Thursday and Friday, I'd come directly from the airport on [1705] Thursday mornings in a taxi, and that often was surrounded by protestors and they would pound on the windows.

Sometimes it would be too many of them and I'd be scared enough I'd just tell the taxi driver to go. And we'd go to a different area. I'd call into the clinic or find out what was going on and wait till it calmed down, and then have them bring me back later.

Sometimes when it was on a Friday morning when I'd stayed in town at night and I'd have to walk from the hotel and just to get into the clinic was a number of times real -- a physical ordeal in that I was determined to get in the doors. It

would be people blocking, and I'd have to try to get over them or crawl around them or through them. Staff would try to hold the door open from the other side.

One time I was trying to get in the door. One of the staff was assisting me, and there was somebody else -- one of the protestors was holding my leg and screaming at me not to go in.

Q. Did you learn the name of the person --

A. That was Monica.

Q. Was there any other physical contact with your body by the protestors on these occasions?

A. There was one time when I took a taxi on a Thursday morning and had gone -- and there's a back door of the clinic and didn't see anybody, felt real relieved. Got out of the [1706] taxi, and as it left two men came from behind a van and -- first they went and ran to block the door for me to go. There was two doors actually. And as I went to the one door, they ran to it and blocked me and back and forth we played for a while.

They finally grabbed me and had me pushed up against the van they had been behind and were yelling at me to stop killing babies and that I deserved to die like the babies were dying.

Q. Did you learn the name of the man who had grabbed you?

A. One of them, and it was Matt Trewhella.

Q. Let's talk about your experience at the Appleton clinic. During what years did you perform abortion and related services at the clinic in Appleton?

A. The same period of time. From the summer of '89 to the fall of '92.

Q. Did you meet any opposition from anti-abortion protestors there?

A. Yes.

Q. Did you come to identify the leaders of those blockades?

A. The only person who was obviously a leader that I identified during a blockade there was a Norm Weslin.

Q. Do you know the group that he led?

A. He was very active in a group called the Lambs of Christ. I managed -- or was unfortunate enough to run into him later [1707] at other clinics, but at Appleton he was one that led a protest where people came and chained themselves with kryptonite locks outside the clinic doors. Chained themselves together and then to clinic building doorknobs, et cetera.

Q. When you say kryptonite locks, what kind of locks are these?

A. You know, those bicycle locks, the U-shaped bicycle locks.

Q. Is it possible to remove them -- is it possible to remove them with any ordinary equipment?

A. No. It takes a long time to remove them. You have to have special equipment, special saws. It takes a long time.

Q. Did Mr. Weslin chain himself or someone else to the clinic?

A. He was chained to the clinic and to somebody else.

Q. Did you have any other problems with the protestors while you were working at the Appleton clinic other than the kryptonite lock blocking by Norman Weslin and his group the Lambs?

A. There was constant attempts to keep me and patients from getting into the clinic in a peaceful manner. Many times I'd be met at the airport. What was most disturbing there is that I would fly from Minneapolis/St. Paul usually to Appleton airport, but sometimes I would change my flight at [1708] the last minute. And because there was protestors both in Minneapolis and in Appleton that even if I would get on a plane normally to fly to Appleton but would go to Green Bay instead, the protestors would be there waiting for me. Which said to me that the people in Minneapolis were obviously communicating with the ones in Appleton or Green Bay.

So there was -- I was being met at an airport no matter where I flew into. And I was flying under a different name so they couldn't have gotten my name that way.

Q. Did you undertake some precautions as a result of that?

A. At one point I started wearing disguises. It was real hard because if I got into a taxi at the airport, they'd surround the taxi and wouldn't let it drive away, and the driver would freak out.

It was just real hard to be myself and alone walking through it. So I started wearing disguises and wearing the types of clothes that I normally wouldn't wear and it worked for a while.

Q. Let's talk about your experience in Fargo. During what years did you work there?

A. I worked there from '89 until February of '94.

Q. Why did you choose to work at the Fargo clinic?

A. It's a very remote area. It's the only clinic in North Dakota, and they were having a real hard time finding physicians to keep it open.

[1709]

Q. Did you run into any problems delivering medical services at Fargo?

A. The same as every place else with protestors and clinic blockades and meeting at the airport.

Q. Did Mr. Scheidler --

MR. BREJCHA: Your Honor, move to strike the answer about same as everywhere else.

THE COURT: Overruled.

BY MS. CLAYTON:

Q. Dr. Wicklund, did Joseph Scheidler have any involvement in leading or participating in the protests and blockades at Fargo?

MR. BREJCHA: Object to the form of the question, Your Honor, involvement.

THE COURT: Overruled.

THE WITNESS: One of the telephone messages that was on for quite a long time actually was on Joe Scheidler's Pro-life Action News was a thing they were calling Focus on Fargo, where he was encouraging everybody to go to Fargo to stop the clinic from being open and trying to make North Dakota an abortion free state in their words.

BY MS. CLAYTON:

Q. Dr. Wicklund, just before you came on the stand I gave you a couple of documents. Would you find the one that has the Plaintiffs' Exhibit 1089 on it. This is a transcript of [1710] the Pro-life Action News hotline. It's a transcript of it for July 22nd, 23rd, 1991. And I'm going to call your attention to the second page.

MR. BREJCHA: Your Honor, may we have a second to just retrieve this.

THE COURT: All right.

THE WITNESS: Miss Clayton, I'm not sure you gave me that one.

BY MS. CLAYTON:

Q. Well, you know, if I didn't give it to you, can you read it on that little television screen.

A. Would you like me to read it out loud?

Q. We'll wait a moment until Mr. Brejcha gets one.

MR. BREJCHA: Yes, we have it, Your Honor. Thank you, Miss Clayton.

BY MS. CLAYTON:

Q. Yes. Why don't you read the highlighted portion, and then I'm going to ask you if that's one of the portions of the hotline that you heard when you are dialing up the action line.

A. "Out in Wichita, Kansas, a new Atlanta may be brewing. Reports we've been getting say that all three Wichita abortuaries were closed for a whole week while pro-lifers were there, and they now plan to stay on. Also in Fargo, North Dakota it's Focus on Fargo concentrating on the lone [1711] abortion mill in that state. Pro-life leaders are inviting activists

to visit both cities. See you there. And thank you for calling Pro-Life Action News." That's how he would say the ending.

Q. You gave a dramatic rendition of that closing salute. Is that one of the tapes that you recall hearing?

A. Yes.

Q. And why do you recall hearing that one in particular out of all of them?

A. Because I was going to Fargo to work and obviously it had a big effect on me that he was inviting people from all over the country to come to Fargo and try to close us down.

Q. Did I give you a document marked 1090. I may have given you the wrong set. I'm sorry. Let me put this one on the -- we call this little thing the Elmo. It projects the papers.

This is Plaintiffs' Exhibit 1090, and it's an Action News transcript from August 12th through 13th, 1991. And we will focus here on a section toward the bottom of the first page. Can you see that on the screen?

A. Uh-huh.

Q. I'm not going to ask you to read that one aloud, but looking it over by yourself is that another one of the hotline --

A. Yes.

Q. -- news that you heard Mr. Scheidler read or someone read [1712] for him on his hotline?

A. Yes, it is.

MR. BREJCHA: Your Honor, under 106, although the witness wasn't asked to read it --

THE COURT: You know the procedure, Mr. Brejcha. If you will notify Miss Clayton, if there are objections, I will take them up. If there are no objections, then do it through counsel.

MS. CLAYTON: Your Honor, may we have a side bar.

THE COURT: Let's have a side bar.

(Side bar conference:)

MS. CLAYTON: Mr. Brejcha wants me to read that they stopped for mass, which is the portion that was read -- well, she didn't read any of this one actually.

MR. BREJCHA: It was highlighted as such, Your Honor, without the sentence being highlighted and that's part of his report.

MS. CLAYTON: And the fact that that addresses --

MR. BREJCHA: I would ask if I could speak briefly to my request. Your Honor, the whole purpose of this is to show that there was some sort of violent or disruptive demonstration and the reference to the conduct of the demonstrators is certainly

pertinent. Since they plucked out the sentence in the beginning and the end, they should hear how he relates their conduct on that day. This is the report [1713] as it presumably was read over the Action News. And this would also obviously have an impact on her reaction, and Miss Clayton repeatedly asked her about her reaction.

THE COURT: How does the fact that he stopped for mass and had breakfast with the League director and his family in his backyard go to her reaction?

MR. BREJCHA: Well, I think the fact that there's a religious stop right in the middle of the message is something that, one, Mr. Scheidler here brought out in making his report; and two, it goes as I say to the character of the demonstrators, their peaceable nature. They stopped in the middle for a religious ceremony.

THE COURT: Well, the rule of completeness does not require that everything come in. This is being offered to show that Mr. Scheidler was visited by a group of pro-life rescuers on their way to Fargo.

MR. BREJCHA: Yes.

THE COURT: Now, what they did in the meantime is not relevant to the fact that they stopped to meet with Mr. Scheidler on their way to Fargo. It is not a matter of unfairness that this is not read. Now, you may wish to offer this as part of your case, but under Rule 106 there's no requirement that this be read. So I am going to sustain the objection to including that paragraph.

(Before the jury:)

[1714]

MS. CLAYTON: Did we get a ruling on that, Your Honor?

THE COURT: Overruled.

BY MR. SACHNOFF:

Q. At the request of the court reporter and others, you and I are both going to try to slow down a little bit, okay.

A. Okay.

Q. We're apparently both talking a bit too fast.

A. Okay.

Q. Now, after hearing Mr. Scheidler announce his Focus on Fargo on his hotline and talk about all the people coming to Fargo, which was then the last clinic that offered abortion services in the state, what did you do, if anything?

A. I talked to my family to prepare them, that it was going to be a long haul.

Q. What happened in about this time frame? Was there actually a group of people that arrived?

A. There was --

MR. BREJCHA: Objection, Your Honor, leading.

THE COURT: Overruled.

THE WITNESS: The protests in Fargo escalated all that summer. It became an ordeal to get to the clinic and trying to decide whenever I'd go there if I was going to fly or drive and which would be the safest.

In that fall the Lambs -- people identifying [1715] themselves as the Lambs of Christ had been in Fargo a lot. And then a morning in October I woke up and there -- I lived at the end of a three and a half mile dead end road on six acres of wooded land, a very small yard. The woods was real close to the house. And woke up in the morning to the shouts of people screaming Susan kills babies, and I couldn't figure out -- I thought I was dreaming.

And I wake up my husband and we looked out the window and we could see the shadows of people all around. We went to all the windows in the house. There was people everywhere outside and something in the yard. We couldn't tell what was going on, and kept the lights off, called the police. And that was the beginning of a month long siege on our house by a group that again identified themselves as the Lambs of Christ.

Q. Did you learn the names of some of the individuals who were working with that group called Lambs of Christ?

A. Norm Weslin had always been associated with that group, but the person that I saw there on occasion and also saw up in Fargo was the woman whose name is Shelley Shannon.

Q. How did you later learn that that was her name?

A. Through both television, seeing her face.

MR. BREJCHA: Your Honor, move to strike. Lack of foundation.

THE COURT: Overruled.

[1716]

BY MS. CLAYTON:

Q. You mentioned that some of these protestors were getting close to your house. Would you tell us when you can recall them surrounding your house and tell us how thoroughly they surrounded it on that occasion.

A. On that particular occasion it was people all around on our property. They had -- with the help of neighbors we figured out that they had somebody posted down at the beginning of the road, the three and a half miles, and as soon as they saw police cars coming they used cell phones to call the people by our house and have them get off the property, so they stayed at the end of the driveway then.

But about over the next month they frequently blockaded our driveway so that I couldn't get out. They would put barrels filled with cement in the driveway. And, of course, it's through woods, so it doesn't take more than four barrels across the woods so you can't get out. Interestingly enough they would let my daughter, who was in eighth grade I guess at that time, the

police would come and they'd let the police come in and pick up my daughter and take her out again to school. So she rode back and forth to school in a police car frequently.

It got where I often couldn't come home because I was afraid I wouldn't be able to get out in the morning to be able to go to work at whatever clinic I needed to get to. [1717] And my daughter became too frightened to stay at home. So my husband actually had to quit college. He had gone back to college to get a degree and had to quit fall semester because we were so frightened for our property. It was one morning we woke up, and there had been -- there was always people around, day and night.

MR. CRAIN: Your Honor, I object to the long narrative.

THE COURT: Sustain the objection. Dr. Wicklund, for reasons that are not obvious, questions and responses in this proceeding are not like a conversation.

THE WITNESS: Okay.

THE COURT: It has to be broken down into discrete questions and answers to those questions, and it's awkward sometimes but you will have to trust me on the fact that there's good reasons for doing it that way.

THE WITNESS: Okay.

THE COURT: So if you can confine your response to the specific question that's asked, it would be helpful.

MR. BREJCHA: Your Honor, I move to strike the narrative answer.

THE COURT: I'll overrule the objection.

BY MS. CLAYTON:

Q. Why don't you tell us what precautions you and your family took to deal with this situation where you were being [1718] surrounded on your very own property at your own home.

A. We had to hire security yards to watch the property. I bought a very expensive German shepherd guard dog that had been trained for personal protection. We had to have family members at the house at all times.

Q. Were there also blockades of your clinic in addition to the blockades of your home?

A. Certainly. There was blockades going on up in Fargo concurrent with the blockades of my house.

Q. Was any leader of Operation Rescue present at any of those blockades at the clinic?

A. Keith Tucci was one of the people that had come to Fargo to blockade clinics and act as a leader.

Q. Approximately when was that, if you can recall?

A. It would have been summer or fall of '91.

Q. So was that the same time period when you are listening to these hotlines that we referred to earlier?

A. Yes.

Q. Were there any volunteers who assisted you in dealing with the -- in giving you extra security while you were at Fargo?

A. Yes. There was a number of volunteers. Sometimes we had as many as 10 to 20 people outside the clinic helping us escort patients in.

Q. Where did those volunteers come from, if you know?

[1719]

A. Most of them came from the local community. Some were NOW members, some were NARAL members. NARAL is the National Abortion Rights Action League, and NOW is the National Organization of Women.

Q. Were they all women, all men, or both?

A. No. There was many men and women. Some minorities present. It was very helpful.

Q. Now, during the time you worked at these three clinics that we've discussed did you perform just abortion services?

A. No. I feel real strong about preventing unwanted pregnancies in the first place, so we provide family planning, counseling, and help to all of our patients. Besides annual

exams, breast exams, GYN -- lots of other women's services besides abortions.

MS. CLAYTON: Thank you. I have no other questions at this time.

* * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

[Trial testimony excerpts]

JOSEPH M. SCHEIDLER, DEFENDANT HEREIN,
PREVIOUSLY SWORN
CROSS EXAMINATION (resumed)

[4148]

* * *

BY MS. CLAYTON:

Q. When it comes to clinics that provide medical services, including abortion, isn't it a fact that you don't want the women to use those clinics for any purpose, even for gynecological purposes unrelated to abortion?

A. That's true.

Q. And you make no effort to determine whether a woman who's seeking to enter a clinic that offers services of which abortion is one, you make no effort to determine whether she's there for other medical treatment or for an abortion, right?

[4149]

A. Well, that depends.

Q. Let me direct your attention to Volume 8 of your deposition beginning on page 1331. Beginning on line 8, isn't it a fact that you gave this answer to this question:

"Question: Have you personally ever made any effort to let women in if they indicated that they were not there seeking an abortion?"

And your answer:

"Let them in when? Usually if we were blocking an entrance, there were enough people there that one person deciding to let them in wouldn't make any difference. Besides we don't want them to go in for any service in an abortion clinic. It just keeps the abortionists in business."

That was your answer, wasn't it, Mr. Scheidler?

A. Oh, that's true, yes. I thought you meant in a building maybe where there's a clinic and there are other services.

* * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| NATIONAL ORGANIZATION FOR WOMEN, INC., et al., | ) |
| | ) No. 86 C 7888 |
| Plaintiffs, | ) |
| | ) Judge Coar |
| v. | ) |
| | ) |
| JOSEPH M. SCHEIDLER, et al., | ) |
| | ) |
| Defendants. | ) |

**JURY INSTRUCTIONS**

(excerpts)

[filed Apr. 15, 1998]

## JURY INSTRUCTION NO. 12

### Nature of the Case

This lawsuit is brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, and state law. The plaintiffs seek injunctive relief and damages from the defendants who allegedly have conspired, among themselves and with others through their alleged enterprise, Pro-Life Action Network ("PLAN"), to engage in a pattern of illegal activity, which the plaintiffs contend was designed to injure the business and property of clinics where abortions are performed and to deprive women of the right to obtain the services of those clinics.

A women's right to obtain an abortion is not at issue in this lawsuit. The United States Supreme Court already has declared that women have a constitutional right to choose to have an abortion.

Nor is the right to engage in peaceful protest an issue in this lawsuit. The parties agree that peaceful picketing, leafleting and participating in the legislative process are activities protected by the First Amendment of the United States Constitution.

What is at issue in this case is whether the defendants engaged in activities that are prohibited by RICO.

The fact that it has taken 12 years for this case to come to trial should not concern you.

JURY INSTRUCTION NO. 20

Claim I -- RICO Violation

Third Element: "Associated with" the Enterprise

Plaintiffs must show that the defendant was "associated with" PLAN. That is, the defendant must have had some minimal association with PLAN and have known something about PLAN's activities as they relate to the illegal acts under RICO. It is not necessary that the particular defendant committed acts unlawful under RICO or was aware of all of the unlawful acts committed by the other people who were associated with PLAN.

If the defendant was associated with PLAN at any time during its existence, this element is met. It is not necessary that the particular defendant be associated with PLAN for the entire time that it existed.

JURY INSTRUCTION NO. 21

Claim I -- RICO Violation

Fourth Element: Operating or Managing an Enterprise

The plaintiffs must show that, as part of his or its association with PLAN, the defendant participated in the operation or management of PLAN or acted at the direction of PLAN's leaders. The defendant need not have been part of the top management or have held any formal position in PLAN.

JURY INSTRUCTION NO. 22

Claim I -- RICO Violation

Fifth Element: Pattern of Unlawful Activity

Plaintiffs must show that the defendant or other people associated with PLAN committed two or more unlawful acts in any of the following categories in any ten-year period:

(1) Acts or threats involving extortion against a patient, prospective patient, doctor, nurse, clinic worker, or clinic;

(2) Threats of murder against a doctor, nurse, or clinic worker;

(3) Attempting or conspiring to do any of the acts listed in ¶¶ (1)-(2) above, even if the act was not actually carried out;

(4) Acts or threats of physical violence to any person or property;

(5) Travel across state lines, or use of the mails or telephone, with the intent to promote, manage or carry out any act of extortion, arson, or any crime of violence in violation of state or federal law followed by an act in furtherance of that intent;

(6) Attempting to travel across state lines, or use the mail or telephone to do acts described in ¶ (5) above; or

(7) Causing others to travel across state lines, use the mail or telephone to do or attempt acts described in ¶ (5) above.

The two or more acts may be from the same category or different categories. I will give you further explanation about some of these categories of unlawful acts in a moment.

The plaintiffs must also show that there was some connection between the acts, for example, that they happened as a result of a common scheme, plan or motive.

JURY INSTRUCTION NO. 24

Claim I -- RICO Violation

Unlawful Acts Under RICO:
Federal Law Extortion (Hobbs Act)

Plaintiffs have alleged that the defendant and others associated with PLAN committed acts that violate federal law prohibiting extortion. In order to show that extortion has been committed in violation of federal law, the plaintiffs must show that the defendant or someone else associated with PLAN knowingly, willfully, and wrongfully used actual or threatened force, violence or fear to cause women, clinic doctors, nurses or other staff, or the clinics themselves to give up a "property right." The term "property right" means anything of value, including a woman's right to seek medical services from a clinic, the right of the doctors, nurses or other clinic staff to perform their jobs, and the right of the clinics to provide medical services free from wrongful threats, violence, coercion and fear. It does not matter whether or not the extortion provided an economic benefit to PLAN.

Any fear involved must be reasonable under the circumstances. Fear includes not only fear of physical violence, but fear of wrongful economic injury. Exploitation of the victim's reasonable fear constitutes extortion regardless of whether or not the defendant was responsible for creating that fear and despite the absence of any direct threats.

Plaintiffs must also show that the extortion of the defendant or others associated with PLAN "affected interstate commerce." (See Jury Instruction No. 19 for a definition of interstate commerce). It is sufficient if the acts of extortion were aimed

at medical facilities that purchased supplies made in another state or that served patients who came from another state.

If the defendant or someone else associated with PLAN attempted to commit such an act, it is a violation even if the act was not completed.

## JURY INSTRUCTION NO. 25

### Definition of a Threat

In order for the plaintiffs to establish a threat they must demonstrate that the defendants or their co-conspirators made a statement, or engaged in conduct, in a context or under such circumstances wherein a reasonable person would foresee that the statement or conduct would be interpreted by those to whom the maker communicates the statement or conduct as a serious expression of an intention to inflict harm, including bodily harm or wrongful economic harm. Context, as used in this instruction, includes the surrounding events and the reaction of the listeners.

Whether an action or statement is a threat is a matter for you, the jury, to decide. For example, you have heard evidence about physical blockades at clinics. You must decide whether the act of blockading constituted a threat.

You need not find that the defendant or co-conspirator intended to carry out the threat or was even capable of carrying out the threat in order to find that the action or statement was, in fact, a threat.

JURY INSTRUCTION NO. 28

Claim I -- RICO Violation

Proximate Cause

Finally, you must consider whether there was some direct relation between the wrongful actions of the defendant or others associated with PLAN and the injury or harm to plaintiffs' business or property rights, which includes a woman's right to seek medical services from a clinic, the right of the doctors, nurses and other clinic staff to perform their jobs, and the right of the clinics to provide medical services.

An injury or harm is "proximately caused" when an act plays a substantial part in bringing about or actually causing the injury or harm. In determining whether actions of defendant or someone else associated with PLAN proximately caused the injury or harm to the plaintiffs, you may consider the various unlawful acts under RICO discussed above and any overt act taken in furtherance of PLAN's goals.

## JURY INSTRUCTION NO. 30

### Defendants' Liability for Acts of Others

Liability may not be imposed upon any defendant merely because that defendant belonged to a group, some members of which committed acts of violence. In order to find the defendants liable, you must conclude that the enterprise, or those acting on behalf of the enterprise, directly or indirectly authorized or ratified unlawful activities and that the defendants held a specific intent to further those illegal objectives.

## JURY INSTRUCTION NO. 34

### First Amendment

The First Amendment to the Constitution permits persons to join with others to express a particular viewpoint. In public debate, speech, including conduct, is protected by the First Amendment. This may be so even if the speech is uninvited and unwelcomed by the person to whom it is directed or to others within earshot. The First Amendment even protects speech that is insulting or even outrageous.

You have heard evidence of speeches made by some of the defendants and have read some of their writings. Some of those speeches and writings contain strong and emotional language. Mere advocacy of the use of force and violence may not be the basis for finding defendants liable for having made the speech or authored the writing unless the words used may be said to incite imminent unlawful conduct that in fact followed within a reasonable period. Speeches and writings may be taken, however, as evidence that the defendants or the enterprise gave other specific instructions to carry out violent acts or threats.

Threats to patients, owners or operators of clinics, clinic staff (including doctors), and those assisting patients, owners/operators of clinics, or staff are not protected by the First Amendment. Physical attacks on patients, owners/operators of clinics, or clinic staff are not protected by the First Amendment. Destruction of property is not protected by the First Amendment.

The protection of the First Amendment does not extend to joining together to deprive others of their lawful rights.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

***86 C 7888 N.O.W. et al v. Scheidler, et al***

**SPECIAL INTERROGATORIES AND VERDICT FORM**

We, the jury in this action, unanimously find as follows:

1. Is the Pro-Life Action Network (PLAN) a group of people or organizations associated together for a common purpose?

   Yes ✓ No ___

2. Were the following Defendants associated with PLAN? (See Jury Instruction No. 20 for the definition of "associated with")

| | | |
|---|---|---|
| Joseph Scheidler | Yes ✓ | No ___ |
| Andrew Scholberg | Yes ✓ | No ___ |
| Timothy Murphy | Yes ✓ | No ___ |
| Pro-Life Action League | Yes ✓ | No ___ |
| Operation Rescue | Yes ✓ | No ___ |

3. Did the following Defendants participate in the operation or management of PLAN? (see Jury Instruction No. 21 for a definition of participation in operation or management)

| | | |
|---|---|---|
| Joseph Scheidler | Yes ✓ | No ___ |
| Andrew Scholberg | Yes ✓ | No ___ |
| Timothy Murphy | Yes ✓ | No ___ |
| Pro-Life Action League | Yes ✓ | No ___ |
| Operation Rescue | Yes ✓ | No ___ |

4. Did any Defendant, or any other person associated with PLAN, commit any of the following acts?:

| | | Yes | Number of Acts | No |
|---|---|---|---|---|
| (a) | Acts or threats involving extortion against any patient, prospective patient, doctor, nurse, or clinic employee, in violation of federal law | ✓ | 21 | |
| (b) | Acts or threats involving extortion against any patient, prospective patient, doctor, nurse, or clinic employee, in violation of the law of any state | ✓ | 25 | |

| | | | | |
|---|---|---|---|---|
| (c) | Threats of murder against a doctor, nurse, or clinic employee | | 0 | ✓ |
| (d) | Attempt or conspiracy to do any of the acts listed above, even if the act was not actually carried out | ✓ | 25 | |
| (e) | Acts or threats of physical violence to any person or property | ✓ | 4 | |
| (f) | Travel across state lines, or the use of the mail or telephone, with intent to commit or facilitate an unlawful act, such as extortion, under state or federal law | ✓ | 23 | |
| (g) | Attempt to do an act described in (f) above, even if the act was not actually carried out | ✓ | 23 | |
| (h) | Causing another person to do an act described in (f) above | | 0 | ✓ |

5. Were at least two (2) of these acts committed during any ten-year period?

Yes ✓ No ___

6. If you answered "yes" to any item of 4(a) or 4(b), was your answer based solely on blockades of clinic doors or sit-ins within clinics, without more?

Yes ___ No ✓

7. Did PLAN or persons associated with PLAN engage in a "pattern" of at least two of the acts that you found in Question 4 above? (see Jury Instruction No. 28 for the definition of "associated with")

Yes ✓ No ___

8. Did any of the acts that you found in Question 4 above affect interstate commerce? (see Jury Instruction No. 19 for the definition of interstate commerce)

Yes ✓ No ___

9. If any defendant or any person associated with PLAN committed any two (2) acts described or listed above in question number 4 within any 10 year period, did those acts proximately cause injury to the business or property of the following plaintiffs? (see Jury Instruction No. 28 for the definition of proximate cause)

The women represented by NOW:

Yes ✓ No ___

Delaware Women's Health Organization:

Yes ✓ No ___

Summit Women's Health Organization:

Yes ✓ No ___

**If you answered "yes" to Questions 1, 5, 7 and 8, and if you found that at least two acts were committed in Question 4, and if you answered "yes" as to any Defendant(s) in Questions 2 and 3, you have found those Defendant(s) liable on Claim I, and you should proceed to the next question:**

10. As to the Defendants whom you have found liable on Claim I, what amount will adequate compensate these Plaintiffs for their RICO injuries?

Summit Women's Health Organization $54,471.28

Delaware Women's Health Organization $31,455.64

**If you found all of the Defendants liable on Claim I, you need not proceed any further; simply go to the last page and sign and date the Verdict Form.**

**If you did not find all of the Defendants liable on Claim I, you should answer the following questions as to Claim II for any such Defendant(s):**

11. Did the following Defendants combine or agree with one another or with others to operate PLAN through a pattern of acts illegal under RICO?

| | | |
|---|---|---|
| Joseph Scheidler | Yes ___ | No ___ |
| Andrew Scholberg | Yes ___ | No ___ |
| Timothy Murphy | Yes ___ | No ___ |
| Pro-Life Action League | Yes ___ | No ___ |
| Operation Rescue | Yes ___ | No ___ |

12. As to the Defendant or Defendants whom you have found liable on Claim II, what amount will adequately compensate these Plaintiffs for their RICO injuries?

Summit Women's Health Organization $_____

Delaware Women's Health Organization $_____

Please now sign and date the verdict form and tell the bailiff that you have reached a verdict.

*4-20-98*
Date

*/s/ Amandis Rott*
Foreperson

*/s/ Sheila L. Lark*
Juror

*/s/ Patricia L. Mitchell*
Juror

*/s/ Kats Nakashima*
Juror

*/s/ Patrick L. Ostrander*
Juror

*/s/ Julie Martin*
Juror

_____
Juror

| | |
|---|---|
| _____ | _____ |
| Juror | Juror |
| _____ | _____ |
| Juror | Juror |
| _____ | |
| Juror | |

**SUPREME COURT OF THE UNITED STATES**

April 22, 2002

Re: Joseph Scheidler, et al. v. National Organization for Women, Inc., et al.
No. 01-1118
Operation Rescue
v. National Organization for Women, Inc., et al.
No. 01-1119

The motion of People for the Ethical Treatment of Animals, Inc. for leave to file a brief as amicus curiae is granted. The motion of Seamless Garment Network, et al., for leave to file a brief as amici curiae is granted. The motion of Life Legal Defense Foundation for leave to file a brief as amicus curiae is granted. The petitions for writs of certiorari are granted limited to Questions 1 and 2 presented by the petition in No. 01-1118. The cases are consolidated and a total of one hour is allotted for oral argument.